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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~974~~ 100.

THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

W. J. CHAMBERLAIN, ADMINISTRATOR OF RICHARD STEVENS, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED SEPTEMBER 30, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 374.

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vs.

W. J. CHAMBERLAIN, ADMINISTRATOR OF RICHARD STEVENS, DECEASED.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, MARCH 12, 1889.

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1 In Circuit Court, Hamilton County, Iowa.

W. J. CHAMBERLAIN, Administrator of the Estate of Richard Stevens, Deceased,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

Petition.

To the hon. circuit court:

Your petitioner, W. J. Chamberlain, respectfully represents that he is the administrator of the estate of Richard Stevens, duly commissioned and acting as such under and by virtue of an appointment made by the circuit court of said county.

That defendant is a corporation duly organized as an insurance company under and by virtue of the laws of the State of Connecticut, & as such was duly authorized to do business in Iowa and in Hamilton county at all the dates hereinafter mentioned, and had an office & agency in Webster City, Iowa, for that purpose.

That on or about the 12th day of January, A. D. 1884, the defendant-, at the instance & request of Richard Stevens, then living at Jewell Junction, Iowa, issued their policy of insurance on the life of the said Stevens for the sum of five thousand dollars, in consideration of the premium then paid by him, &c., whereby they promised and agreed to pay the executors, administrators, or assignees
2 of said Stevens the said sum of five thousand dollars within ninety (90) days after they should receive proof of the death of the said Stevens, and then and there delivered said policy No. 31328 to him; all of which will more fully appear by reference to a copy thereof, attached hereto, marked "A," and made a part of this petition.

That the said Richard Stevens departed this life by being run over and killed by the cars at Jewell Junction, Iowa, on the — day of ——, A. D. 1884, and the proof of his death was at once furnished defendant- to their satisfaction, & more than ninety days have elapsed since that time, and defendants are justly indebted on said policy in the sum of five thousand ($5,000) dollars and interest.

That plaintiff is now the lawful holder and owner of said claims as administrator as aforesaid & demands judgment against defendants for the sum of five thousand dollars, and six per cent. interest thereon from August 10, 1884, with costs of suit.

CHASE & CHASE,
Att'ys for Pl'ff.

[Endorsed:] No. 1741. Circuit court. W. J. Chamberlain, administrator of estate of Richard Stevens, deceased, *vs.* Continental Life Insurance Company of Hartford, Connecticut. Petition. Filed Dec. 4, 1884. W. M. Taylor, clerk. Chase & Chase, att'ys for pl'ff.

3 CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

[Vignette.]

Number 31328. Amount, $5,000.

In consideration of the application for this policy of insurance and of each of the statements made therein;

And, in further consideration of the payment of the sum of ninety-seven dollars and eighty-five cents, at the office of the company, in Hartford, Connecticut, at the date hereof, the receipt whereof is hereby acknowledged, and of the semi-annual payment of ninety-seven dollars and eighty-five cents, to be made at the said office on or before the twelfth day of July and January in every year during the continuance of this contract, —— ——

Promise to pay to Richard Stevens, — executors, administrators, or assigns, the sum of five thousand dollars (any indebtedness to this company on account of this contract to be first deducted therefrom), at the office of the company, in Hartford, Connecticut, within ninety days after satisfactory proofs of the death of said Richard Stevens, of Jewell Junction, in the county of Hamilton, State of Iowa, shall have been furnished to the company at their said office.

And the said company hereby further promise and agree that after three years from the date hereof the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the time and place and in the manner herein stipulated, and that the regulations of the company as to age, residence, travel, occupation, and employments shall be observed, and that in all other respects, after the expiration of said three years, the liability of the said company under this policy shall not be disputed.

This policy is issued and accepted upon the condition that the provisions and requirements printed or written by the company upon the back of this policy are accepted by the assured as part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof the said Continental Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this twelfth day of January, one thousand eight hundred and eighty-four.

I. S. PARSONS, *President.*

ROB'T E. BEECHER, *Secretary.*

Life of another.—65.

☞ Agents of the company are not authorized to make, alter, or discharge contracts, to waive forfeitures of policies, or to receive premiums when overdue.

4 ☞Answers to questions should be written legibly.

Copy of Application for Insurance in the Continental Life Insurance Company of Hartford, Connecticut.

1. Name (in full) of the party whose life is proposed to be insured.	Place of birth.	Date of birth.			Age at next birthday.
		Year.	Month.	Day.	
Richard Stevens	Cauda	1839	Feb'y	15	45

2. Present residence, Jewell Junction, in the county of Hamilton, State of Iowa.

3. Profession or occupation (present), hotel-keeper. Give full particulars (former). Farmer. Is the said party married? Yes.

4. Describe fully your habit in regard to the personal use of alcoholic or other stimulants, narcotics, and tobacco. Strictly temperate; no narcotics; no tobacco. What has been your habit in this respect through life? Same.

5. Has the said party had any of the following complaints? (Separate answers required to each.)

1. Insanity?	Neuralgia? No.	18. Habitual cough?	No.
2. Epilepsy?	No.	19. Spitting or raising of blood?	"
3. Fits or convulsions?	"	20. Any disease of the lungs?	"
4. Rheumatism?	"	21. Any disease of the heart?	"
5. Gout?	"	22. Any disease of the brain?	"
6. Cancer or any tumor?	"	23. Any disease of the liver?	"
7. Small-pox?	"	24. Any disease of the kidneys?	"
8. Paralysis?	"	25. Any disease of the stomach?	"
9. Any severe fever?	"	26. Any disease of the bowels?	"
10. Dropsy?	"	27. Eruptions or disease of the skin?	"
11. Asthma?	"	28. Any disease of the urinary organs?	"
12. Dyspepsia?	"	29. Any disease of the generative organs?	"
13. Bronchitis?	"	30. Rupture?	"
14. Fistula?	"		
15. Spinal disease?	"		
16. Pneumonia?	"		
17. Pleurisy?	"		

6. What sickness or sicknesses has the said party had during the ten years last past, and who was the medical attendant? Give his residence. None.

7. Is the said party now in good health, and does he usually enjoy good health? Yes.

8. Has the said party been successfully vaccinated; if so, when last? No.

9. What personal injury or injuries has the said party received? None.

10. (A.) Has either of the parents or any near relative of said party died of or been afflicted with consumption, insanity, gout, or any hereditary disease? A. No.

(B.) Or has either committed suicide? (State particulars.) B. No.

11. What was the age at death, cause of death, duration of final illness, and state of previous health of each of the following persons, if deceased? What is the age and present state of health of each of them, if now living?

	Age, if living.	Condition of health.	Age at death.	Cause of death.	How long sick.	Previous health.
Father	-------	----------	87	Old age	2 mos.	Good.
Mother	-------	----------	65	Fever	4 weeks	"
Brothers—No., 5	65	----------	22	Shot in the army.		
	59					
	48	All good	28	Chronic	-------	Good.
Sisters—No., 3	54					
	57	Both good	3 yr.	Burned to death.		
Father's mother	Don't know anything about them.					
Father's father						
Mother's mother						
Mother's father						

In giving the cause of death avoid all indefinite terms, such as "general debility," "change of life," "fever," "exposure," &c. If the word child-birth be used, how long after delivery did death occur, and were there any symptoms of disease of the chest, such as cough, expectoration, &c.?

12. Which parent does the said party most resemble in appearance and constitution? Mother.

13. Is the said party now insured in this company or has he ever been? If so, state numbers of policies and amount. No.

14. Has the said party any other insurance on his life; if so, where and for what amounts? No other.

15. Has any proposal or application to insure the life of said party ever been made to any company or agent upon which a policy has not been issued? If so, state full particulars. No.

16. Has any physician given an unfavorable opinion upon the life of said party with reference to life insurance? If so, state particulars. No.

17. Where has the said party resided (during summer and winter) during the last ten years? Iowa.

18. (A.) Name and residence of the said party's usual medical attendant. A. None.

(B.) And of his last medical attendant. B. None.

(C.) Or, if none has been employed, of some other medical person to be referred to for information as to health. C. Dr. J. N. Medbury, Webster City, Ia.

19. Name and residence of an intimate friend of the said party not interested in the proposed insurance, to be referred to for similar information as to health. Chas. Fenton, Webster City, Ia.

20. Name, residence, and occupation of the person in whose favor the insurance is proposed and relationship to the said party whose life is proposed to be insured. Myself, or, in case of death, to be divided equally between the legal heirs.

21. Is the said party or are the parties signing this application aware that any untrue or fraudulent answers to the questions in this application, or any suppression of facts in regard to the present or past state of health, habits of life, or condition of the person whose life is hereby proposed for insurance, will vitiate any policy which may be issued on this application and forfeit all payments which may be made thereon? Yes.

22. Has the said party or have the parties signing this application carefully read the questions and the answers thereto? Yes.

23. Sum to be insured, $5,000; premium, $190; term, 15 years; plan, A, tontine, 15 years, semi-annually.

It is hereby affirmed and declared that in this application no circumstance or information touching the past or present state of health, habits of life, or condition of said party has been concealed or withheld which may render an assurance on the life of said party more than usually hazardous or with which the directors of the Continental Life Insurance Company ought to be made acquainted.

It is also hereby declared that the person in whose favor this insurance is proposed, as stated in this application, ha- an interest in the life of the said party whose life is hereby proposed for insurance to the full amount of the said sum of five thousand dollars.

And it is hereby covenanted and agreed that the statements and representations contained in this application and declaration shall be the basis of and form part of the contract or policy of insurance between the said party or parties signing this application and the said Continental Life Insurance Company, which statements and representations are hereby warranted to be true, and any policy which may be issued upon this application by the Continental Life Insurance Company and accepted by the applicant shall be so issued and accepted upon the express condition that if any of the statements or representations in this application are in any respect untrue, or if any violation of any covenant, condition, or restriction of the said policy shall occur on the part of the party or parties signing this application, then the said policy shall be null and void, and all moneys which may have been paid on account of said policy shall be forfeited to the said company.

And it is hereby further covenanted and agreed that the officers of the said company at the home office of the said company, in Hartford, Conn., alone shall have authority to determine whether or not a policy of insurance shall be issued on this or any applica-

tion or whether or not any insurance shall take effect under this or any application.

And it is hereby further covenanted and agreed that no statements or representations made or given to the person soliciting this application for a policy of insurance or to any other person shall be binding on the said company, unless such statements or representations be in writing in this application when the said application is received by the officers of the said company at the home office of the said company, in Hartford, Conn.; and it is hereby further agreed that under no circumstances shall the policy be in force until the first premium, as stated in the policy, shall have been paid during the lifetime of the said party whose life is hereby proposed for insurance to the company or to an agent duly authorized by the company to receive payments of premiums, and that no premium or installment of premium shall be considered as paid unless a receipt shall have been given therefor at the time of payment duly signed by the secretary or president of the said company.

Dated at Jewell Junction, Iowa, this 2nd day of Jan'y, 1884.

RICHARD STEVENS, *Applicant.*

—— ——, *Party to be Insured.*

Witness to the signing hereof:
I. I. BOAK.

[On the margin:] Recommended by Stewart Marks, m'g'r.

☞ The application should be signed by the party for whose benefit the insurance is effected or in behalf of that person and witnessed by the agent.

A husband may sign for his wife, thus: "Ellen White, by John White."

If for the benefit of minor children, "John White, guardian (or trustee), for Anna B., Alice M., and Mary White, my children (or children of —").

Form 153.

Provisions and Requirements Referred to in this Policy.

1. That this policy is issued under the tontine plan, the particulars of which are as follows:

2. That the tontine period for this policy shall be completed on the twelfth day of January, in the year eighteen hundred and ninety-nine.

3. That no dividend shall be allowed or paid upon this policy unless the person whose life is hereby assured shall survive the completion of its tontine period as aforesaid and unless this policy shall be then in force.

4. That all surplus or profits derived from such policies on the tontine plan as shall not be in force at the date of the completion of their respective tontine periods shall be apportioned equitably among such policies as shall complete their tontine periods.

5. That upon the completion of the tontine period, on Jan'y 12th,

1899, provided this policy shall not have been terminated previously by lapse or death, the legal holder or holders of this policy shall have the option either, first, to withdraw in cash this policy's entire share of the assets (*i. e.*, the accumulated reserve and surplus apportioned by this company to this policy), which share this company guarantees shall not be less than fourteen hundred ninety-five and $\frac{5}{100}$ dollars, in addition to the surplus apportioned; secondly, to convert the same into a paid-up policy for an equivalent amount, provided always that if the amount of said paid-up policy shall exceed the original amount of the assurance a satisfactory certificate of good health from one of the company's medical examiners shall be required; thirdly, to continue the assurance for the original amount and apply the entire surplus or profits to the purchase of an annuity to reduce the subsequent premiums falling due upon this policy, provided that in any year in which the amount derived from such annuity, together with annual dividend on this policy, shall exceed the amount of premium due thereon the excess shall be paid in cash to said Richard Stevens or assigns; or, fourthly, to withdraw in cash the share of the accumulated surplus apportioned by said company to this policy and continue the policy in force on the ordinary plan; but if no notice in writing shall be given to the company of the way elected in which to apply the surplus or profits within ninety days after the completion of the tontine period, then the surplus or profits shall be applied in the third way just mentioned.

6. That previous to the completion of its tontine period this policy can have no surrender value in cash or in a paid-up policy.

7. That in the payment of premiums upon this policy a grace shall be allowed of two months, provided always that whenever advantage is taken of this grace a fine shall be paid to the company at the rate of six per cent. per annum for the time deferred.

8. The insured shall not, without the consent of the company previously obtained in writing, pass beyond the settled limits of the United States (excepting into the settled portions of the Dominion of Canada, or, by the usual routes and means of public conveyance, to those portions of Europe lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich); nor, without such previous consent, between the first day of July and the first day of November, to those parts of the United States which lie south of the thirty-second parallel of north latitude or south of the parallel of thirty-six degrees and thirty minutes of north latitude within twenty-five miles of the Mississippi river or one hundred miles of the Atlantic coast; nor enter upon a voyage upon the high seas (except as a passenger, by the usual routes and means of public conveyance, between any Atlantic ports in the United States within the before-mentioned limits or between such last-mentioned ports and any Atlantic port in Europe lying north of the forty-second parallel of north latitude); nor, as a mariner, engineer, fireman, conductor, brakeman, or employee in any capacity, enter upon service on any sea, sound, inlet, river, lake, or railroad; nor enter into any military or naval service whatsoever (the militia not in actual service excepted); nor, without such pre-

vious consent, be personally employed in the manufacture or transportation of gunpowder or fireworks or of highly inflammable or explosive substances, or in submarine operations, mining, or blasting.

9. Death in consequence of a duel or of the violation of law is not a risk assumed by the company in this contract, nor is death by his own hand, sane or insane, if occurring within three years from the date hereof.

10. All premiums are due in Hartford, Connecticut, at the date named in the policy, but at the pleasure of the company suitable persons may be authorized to receive such payments at other places, but only on the production of the company's receipt therefor signed by the president or secretary and countersigned by the person to whom the payment is made. No payment made to any person except in exchange for such receipt will be recognized by the company. All premiums are considered payable annually in advance. When the premium is made payable in semi-annual or quarterly installments that part of the year's premium, if any, which remains unpaid at the maturity of this contract shall be regarded as an indebtedness to the company on account of this contract and shall be deducted from the amount of the claim, and if any premium or installment of a premium on this policy shall not be paid when due this policy shall be void, and no credit for surplus accumulated on this policy shall be deemed applicable to the payment of any premium.

11. The contract between the parties hereto is completely set forth in this policy and the application therefor, taken together, and none of its terms can be modified nor any forfeiture under it waived except by an agreement in writing signed by the president or secretary of the company, whose authority for this purpose will not be delegated.

12. If any statement made in the application for this policy be in any respect untrue this policy shall be void and all payments which shall have been made to the company on account of this contract shall belong to and be retained by the company, provided, however, that discovery of the same must be made by the company and notice thereof given to the assured within three years from the date hereof.

13. The age of the person upon whose death this contract matures will be admitted by the company on due proof, but if not so admitted the amount of insurance payable under this policy at its maturity shall in no case be more than the premium charged would have purchased by the company's rates in use at the date hereof for such person's true age.

14. That no claim shall exist under this policy unless due notice and satisfactory proof of death shall be presented in writing to the officers of said company, at the home office, in Hartford, Conn., within two years after the death of the person upon whose death this contract matures, and that the time within which any suit shall be brought against said company on any claim under this policy is

hereby limited to two years from the time when the right of action accrues.

[Endorsed:] No. 31328. Exhibit "A." Tontine policy. Continental Life Insurance Company of Hartford, Conn. Assurance on the life of Richard Stevens. Amount, $5,000. Date, Jan'y 12th, 1884. Term of life. Annual premium, $190.00. Age, 45. S. Marks, agent. Register, B^3, page —. Edition Dec. 1, 1881. (Oct., 1884.) 1,000. Notify the home office of any change in P. O. address.

5 STATE OF IOWA, } ss:
Hamilton County, }

Be it remembered that at a term of the circuit court of Iowa, holden in and for said county, at the court-house, in Webster City, therein, on the 28th day of January, 1885, were present the Honorable D. D. Miracle, sole presiding judge of said court; C. F. Weston, sheriff of said county, and G. H. Daniels, clerk of said court, when the following proceedings were had, done, and entered of record, to wit:

W. J. CHAMBERLAIN, Adms. of the Estate of Richard Stevens, Deceased,
vs.
CONTINENTAL LIFE INS. CO. OF HARTFORD, CONN.

Now, to wit, January 28, 1885, this cause coming on for hearing on the defendant's application for a change of forum to the Federal court, and the court being fully advised in the premises, the forum of this cause is changed to the middle division, northern district of Iowa.

6 In the United States Circuit Court in & for the Northern District of Iowa.

W. J. CHAMBERLAIN, Administrator, &c.,
vs.
CONTINENTAL LIFE INSURANCE CO. } Jan'y Term, 1886.

Amended & Substituted Answer.

The defendant, for other and further answer in its behalf in the above-entitled case, represents and avers—

That it is a corporation organized under and by virtue of the laws of Connecticut. Defendant further avers that before issuing any policy upon the life of Richard Stevens, deceased, there was received from one I. I. Boak, an agent for defendant at Webster City possessing only the power to solicit applications and forward the same with the premium money to defendant at Hartford, Connecticut, a certain written and printed application for said insurance, prepared and signed by Richard Stevens and bearing date Jan'y

2nd, 1884. A true and correct copy of said application is attached to the petition in this cause, marked Exhibit "A," and made a part.

7 By the express conditions and requirements of the policy the application so made and signed was a part of and contained in the contract of insurance and the policy of insurance was based thereon and was issued and accepted upon the express conditions and agreements contained therein; that the statements and declarations made in the application for the policy and on the faith of which it was issued were in all respects true, and that no circumstance or information touching the past or present state of health, habits of life, or condition of said Richard Stevens had been concealed or withheld which might render the insurance on the life of said Stevens more than usually hazardous or with which the directors of defendant ought to be made acquainted, and by agreement of the parties the said statements and representations became warranties, and it was covenanted and agreed that each, all, and singular of the statements and representations made in said application were in all respects true, and if any one of said statements was in any respect untrue, then and in that case the policy of insurance should be null and void.

And defendant charges the fact to be—

That the said Richard Stevens did violate the condition of the said policy and upon which it was based, in this, that the

8 statements and declarations made by him in his application for the said policy were not in all respects true, but were false in the following matters, to wit:

That in the application for the policy and on the faith of which the same was issued, in answer to the question therein asked him, as to whether or not he had any other insurance on his life, he stated that he had no other, whereas in truth and in fact he had at that time a large amount of insurance upon his life, and was insured in a large amount, to wit, in the sum of sixteen thousand five hundred dollars, in different insurance companies, and the answer was false and untrue. Wherefore the defendant asks to be hence discharged with its costs.

M. D. O'CONNELL, BROWN & CARNEY,
For Def't.

[Endorsed:] W. J. Chamberlain, administrator, &c., *vs.* Continental Life Insurance Co. Amended answer. Filed Jan'y 21st, '86. A. J. Van Duzee, clerk, by W. H. Johnston, deputy. M. D. O'Connell, Brown & Carney, att'ys' for def't

9 In the United States Circuit Court, Northern District of Iowa, Middle Div.

W. J. CHAMBERLAIN, Administrator,
vs.
CONTINENTAL LIFE INS. CO. } Replication.

The plaintiff, replying to the defendant's answer filed herein, states—

1.

That he admits that the application of the said Richard Stevens upon which the policy in question was issued, in answer to a question as to what other insurance he had on his life, stated "that he had none," and that at that time he held certificates in certain co-operative companies providing for assessment on the lives of members in case of death.

That said application for insurance was taken by I. I. Boak, defendant's special agent at Webster City, to whom the policy was sent by the company & delivered to Stevens.

That at the time said application was taken the said Stevens informed the said Boak of all the companies that he had certificates in and the amount of each.

That the said agent of defendant then wrote the answer to said question in said application & informed the said Stevens that the company did not regard co-operative companies as insurance companies and that question should be so answered, and so the
10 plaintiff charges that defendant had full knowledge of all the insurance then existing on the life of the said Richard Stevens and procured him to so answer said question, and are now barred and estopped from saying that said question was not answered correctly.

CHASE & CHASE,
Att'ys for Plaintiff.

[Endorsed:] U. S. circuit court. W. J. Chamberlain, administrator, *vs.* Continental Life Insurance Co. Replication. Filed Jan. 21, 1886. A. J. Van Duzee, clerk, by W. H. Johnston, deputy.

11 In the Circuit Court of the United States in & for the Northern District of Iowa.

W. J. CHAMBERLAIN, Administrator, &c., *vs.* CONTINENTAL LIFE INSURANCE COMPANY. } Jan'y Term, 1886.

Demurrer.

The defendant demurs to the first count or division of the plaintiff's replication, because—

First. The facts stated do not entitle the *the* plaintiff to the relief asked or to any relief.

Second. No statements or representations made to I. I. Boak by Richard Stevens, deceased, at or prior to the signing of the application herein are admissible in evidence, because the application and contract provide that no statements or representations made or given to the person soliciting this application for a policy of insurance or to any other person shall be binding on the said company unless such statements or representations be in writing in this application when the said application is received by the officers of

the said company at the home office of the said company, in Hartford, Conn.

12 Third. No oral representations or statements made to the agent soliciting the application are admissible in evidence, because the parties agreed that such representations or statements should not be binding upon the company.

Fourth. That any oral representations or statements that may have been made by said Boak to said decedant, Stevens, at the time said application was made by said Stevens or at any other time, are not binding upon the defendant and cannot enter into or become any part of the contract of insurance between the said Stevens and the def't.

M. D. O'CONNELL &
BROWN & CARNEY,
Att'ys for Def'ts.

[Endorsed:] W. J. Chamberlain, administrator, &c., *vs.* Continental Life Insurance Co. Demurrer. Filed Jan. 21, 1886. A. J. Van Duzee, clerk, by W. H. Johnston, deputy. M. D. O'Connell & Brown & Carney, attorneys for def't.

13 Be it remembered that at a circuit court of the United States, begun and held at the county court-house, in the city of Fort Dodge, on the 15th day of June, A. D. 1886—the Honorable Oliver P. Shiras, presiding—the following proceedings were had, to wit:

W. J. CHAMBERLAIN, Adms. Rich. Stevens,
vs.
CONTINENTAL LIFE INSURANCE CO. } No. 114. Law.

And now, on this 15th day of June, A. D. 1886, being the 1st day of the term, this cause coming on, upon the demurrer to the replication heretofore submitted to the court at the January term, on the written arguments of counsel, and the court now being fully advised in the premises, it is considered and ordered by the court that the demurrer be, and the same is hereby, overruled, and the defendant excepts.

14 THURSDAY, *June* 17, 1886.

Third day.

W. J. CHAMBERLAIN, Adms. of Richard Stevens, Dec'd,
vs.
THE CONTINENTAL LIFE INS. COMPANY. } No. 114. Law.

And now, on this 17th day of June, 1886, the same being the third day of the term, this cause coming on for trial by jury, the plaintiff appearing by D. D. Chase, Esq., and J. L. Carney, Esq., and M. D. O'Connell, Esq., appearing for the defendant—

Thereupon a jury of twelve good and lawful men, citizens of this district, were duly empannelled, tried, and sworn well and truly to try the issues joined in this cause and a true verdict to give according to the law and the evidence. The names of said jury were as follows, to wit, Wm. Moffett, D. W. Noel, T. J. Hughes, F. H. Simpson, Lewis Lakey, C. E. Greef, John Y. Tilford, John Starr, Henry Dilley, Henry Weist, E. H. Allison, J. A. Winkel. Thereupon the evidence of the parties was produced and the trial of the cause proceeded with. Pending the progress of the trial of the cause, the time for the adjournment of the court having arrived, the further hearing of the cause was continued until to-morrow morning.

15 FRIDAY, *June 18th*, 1886.

Fourth day.

W. J. CHAMBERLAIN, Adms. of the Estate of Richard Stevens,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY. } No. 114.

And now, on this 18th day of June, A. D. 1886, the same being the fourth day of the term, this cause coming on in continuation of the trial by jury, the jury, being called, answer to their names and take their seats in the box. Thereupon the cause is further proceeded with on the trial, and the evidence of the parties is further produced and completed. The counsel are then heard in argument, and the cause is fully submitted. The court thereupon instructs the jury in the law of the case, and they retire in charge of a sworn bailiff to consider their verdict.

And afterwards and on the same day the jury are returned into court, and render and return their verdict as follows, to wit:

W. J. CHAMBERLAIN, Administrator,
vs.
CONTINENTAL LIFE INSURANCE COMPANY.

We, the jury in the above cause, find for the plaintiff and assess his damages at five thousand five hundred fifty-six & $\frac{66}{100}$ dollars ($5,556.66).

D. W. NOEL, *Foreman.*

16 SATURDAY, *June 19th*, 1886.

Fifth day.

W. J. CHAMBERLAIN, Adms.,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY. } No. 114. Law.

And now, on this day, comes the defendant, by its attorney, M. D. O'Connell, Esq., and files a motion for a new trial herein.

17 In the Circuit Court of the United States, Northern District of Iowa, Central Division.

W. J. CHAMBERLAIN, Administrator of Estate of Richard Stevens, &c., Pl'ff,
vs.
THE CONTINENTAL LIFE INSURANCE CO., Def't.

June Term, 1886. Motion to set aside the verdict of the jury and for a new trial.

The defendant in the above-entitled cause moves the court to set aside the verdict rendered in said cause and to grant the defendant a new trial, because—

1st. The verdict is not sustained by sufficient evidence.

2nd. The verdict is contrary to and against the evidence.

3d. The verdict is contrary to the law.

4th. The court erred in admitting the testimony of I. I. Boak as to what the assured, Richard Stevens, said to him when his application for insurance was taken, in reference to what other insurance he then had on his life, and in permitting said Boak to tes-
18 tify that Stevens then told him he had certain certificates of membership in certain co-operative companies, and that he, Boak, told Stevens that he did not consider "that insurance," and that in that light the question, "Has the said party any other insurance on his life; if so, where, and for what amounts?" was answered, "No other;" which said testimony was admitted against the defendant's objection, and its admission then and there excepted to.

The court erred in giving that part of his charge to the jury in which he instructed the jury that if Stevens stated fully and fairly to Boak, the agent of the company, all the facts as they existed in regard to the insurance in the co-operative companies then held by Stevens and fully informed said agent, Boak, that he then held certificates of insurance in co-operative companies, and that Boak then wrote down in the application the answer that Stevens had "no other" insurance, on the theory that they did not constitute insurance within the meaning and understanding of the question as put in the application, that then the mistake lies at the door of the insurance company and not at the door of the assured.

The court erred in refusing to give the instructions marked 1 & 2, asked by the defendant, and the def't then and there excepted.

19 J. L. CARNEY AND
M. D. O'CONNELL,
Attorneys for Def't.

Endorsed: Filed June 19, 1886. A. J. Van Duzee, clerk, by W. H. Johnston, deputy.

20 THURSDAY, *June 24th*, 1886.

Ninth day.

W. J. CHAMBERLAIN, Adms. Richard Stevens, Dec'd,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY. } No. 114. Law.

And now, on this 24th day of June, A. D. 1886, the same being the ninth day of the term, this cause coming on for hearing on the motion for a new trial herein, the plaintiff appearing by D. D. Chase, Esq., his attorney, and J. L. Carney, Esq., — M. D. O'Connell, Esq., appearing for the defendant—

And thereupon the motion for a new trial is overruled, and defendant excepts.

Thereupon the cause coming on for further hearing on the motion for judgment on the verdict of the jury heretofore filed herein—

Thereupon it is ordered, considered, and adjudged by the court that the plaintiff, W. J. Chamberlain, adms. of the estate of Richard Stevens, deceased, have and recover of and from the defendant, The Continental Life Insurance Company, the sum of five thousand five hundred and fifty-six dollars and sixty-six cents, with interest thereon, at six per cent. per annum, from the rendition of this judgment.

21 And that plaintiff recover the costs of suit herein, taxed at $123.25, and that in default of payment thereof execution issue therefor.

And the defendant excepts.

Whereupon defendant prays a writ of error in open court, which is allowed by the court and the bond fixed at double the amount of the judgment if a supersedeas is filed or $500 if a supersedeas is not filed.

22 In the Circuit Court of the United States, Northern District of Iowa, Central Division.

W. J. CHAMBERLAIN, Administrator of the Estate of Richard Stevens, Deceased, Pl'ff,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY, Def't.

UNITED STATES OF AMERICA,
Northern District of Iowa, } *ss*:

To the honorable justices of the Supreme Court of the United States:

And now comes the Continental Life Insurance Company of Hartford, Connecticut, by J. L. Carney and M. D. O'Connell, its attorneys, and complains that in the records and proceedings and also in the rendition of judgment in a suit between W. J. Chamberlain, administrator of the estate of Richard Stevens, deceased, plaintiff, and said

Continental Life Insurance Company, defendant, tried in the circuit court of the United States for said northern district of Iowa, at the *at the* June term thereof, A. D. 1886, and in which judgment was rendered against it on the 24th of June, A. D. eighteen hun-
23 dred and eighty-six, manifest error hath intervened, to the great damage of the said The Continental Life Insurance Company, defendant as aforesaid.

Wherefore the said The Continental Life Insurance Company pray for the allowance of a writ of error and such other proofs as may cause the same to be corrected by the Supreme Court aforesaid.

J. L. CARNEY AND
M. D. O'CONNELL,
Attorneys for Def't.

Allowed:
O. P. SHIRAS, *Judge.*

Endorsed: Filed July 28th, 1886. A. J. Van Duzee, cl'k, by A. H. Johnston, deputy.

24 In the Circuit Court of the United States for the Northern District of Iowa.

I, A. J. Van Duzee, clerk of said court for said district, do hereby certify that the foregoing transcript contains a full, true, and complete copy of the pleadings, record, and judgment entries in a certain cause in said court, wherein W. J. Chamberlain, administrator of the estate of Richard Stevens, deceased, is pl'ff and The Continental Life Insurance Company of Hartford, Connecticut, is def't, as full, true, and complete as the original of the same now remains on file and of record in my office.

Seal Circuit Court U. S., Northern District of Iowa, Fort Dodge.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office, in Fort Dodge, in said district, this 29th day of July, A. D. 1886.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa,
By W. H. JOHNSTON, *Deputy.*

25 CONTINENTAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

[Vignette.]

Number 31328. Amount, $5,000.

Specimen.

In consideration of the application for this policy of insurance and of each of the statements made therein;

And, in further consideration of the payment of the sum of ninety-seven dollars and eighty-five cents, at the office of the company, in Hartford, Connecticut, at the date hereof, the receipt whereof is hereby acknowledged, and of the semi-annual payment of ninety-

seven dollars and eighty-five cents, to be made at the said office on or before the twelfth day of July and January in every year during the continuance of this contract, —— ——

Promise to pay to Richard Stevens, his executors, administrators, or assigns, the sum of five thousand dollars (any indebtedness to this company on account of this contract to be first deducted therefrom), at the office of the company, in Hartford, Connecticut, within ninety days after satisfactory proofs of the death of said Richard Stevens, of Jewell Junction, in the county of Hamilton, State of Iowa, shall have been furnished to the company at their said office. Specimen.

And the said company hereby further promise and agree that after three years from the date hereof the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the time and place and in the manner herein stipulated, and that the regulations of the company as to age, residence, travel, occupation, and employments shall be observed, and that in all other respects, after the expiration of said three years, the liability of the said company under this policy shall not be disputed.

This policy is issued and accepted upon the condition that the provisions and requirements printed or written by the company upon the back of this policy are accepted by the assured as part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof the said Continental Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this twelfth day of January, one thousand eight hundred and eighty-four.

I. S. PARSONS, *President.*
Specimen.

(Signed) ROB'T E. BEECHER, *Secretary.*
Specimen.

Life of another.—65.

☞ Agents of the company are not authorized to make, alter, or discharge contracts, to waive forfeitures of policies, or to receive premiums when overdue.

Ex. "A." Referred — in Bill of Ex.

☞Answers to questions should be written legibly.

Copy of Application for Insurance in the Continental Life Insurance Company of Hartford, Connecticut.

1. Name (in full) of the party whose life is proposed to be insured.	Place of birth.	Date of birth.			Age at next birthday.
		Year.	Month.	Day.	
Richard Stevens	Canada	1839	Feb'y	15th	45

2. Present residence, Jewell Junction, in the county of Hamilton, State of Iowa.

3. Profession or occupation (present), hotel-keeper. Give full particulars (former). Farmer. Is the said party married? Yes.

4. Describe fully your habit in regard to the personal use of alcoholic or other stimulants, narcotics, and tobacco. Strictly temperate; no narcotics; no tobacco. What has been your habit in this respect through life? —.

5. Has the said party had any of the following complaints? (Separate answers required to each.)

	Neuralgia?	No.	
1. Insanity?	No.	19. Spitting or raising of blood?	No.
2. Epilepsy?	"	20. Any disease of the lungs?	"
3. Fits or convulsions?	"	21. Any disease of the heart?	"
4. Rheumatism?	"	22. Any disease of the brain?	"
5. Gout?	"	23. Any disease of the liver?	"
6. Cancer or any tumor?	"	24. Any disease of the kidneys?	"
7. Small-pox?	"	25. Any disease of the stomach?	"
8. Paralysis?	"	26. Any disease of the bowels?	"
9. Any severe fever?	"	27. Eruptions or disease of the skin?	"
10. Dropsy?	"	28. Any disease of the urinary organs?	"
11. Asthma?	"	29. Any disease of the generative organs?	"
12. Dyspepsia?	"	30. Any other disease or disorder?	"
13. Bronchitis?	"		
14. Fistula?	"		
15. Spinal disease?	"		
16. Pneumonia?	"		
17. Pleurisy?	"		
18. Habitual cough?	"		

6. What sickness or sicknesses has the said party had during the

ten years last past, and who was the medical attendant? Give his residence. Ans. None.

7. Is the said party now in good health, and does he usually enjoy good health? Yes.

8. Has the said party been successfully vaccinated; if so, when last? Ans. No.

9. What personal injury or injuries has the said party received? Ans. None.

10. (A.) Has either of the parents or any near relative of said party died of or been afflicted with consumption, insanity, gout, or any hereditary disease? A. No.

(B.) Or has either committed suicide? (State particulars.) B. No.

11. What was the age at death, cause of death, duration of final illness, and state of previous health of each of the following persons, if deceased? What is the age and present state of health of each of them, if now living?

	Age, if living.	Condition of health.	Age at death.	Cause of death.	How long sick.	Previous health.
Father	------	------	87	Old age	2 mos.	Good.
Mother	------	------	65	Fever	4 weeks	"
Brothers—No., 5	65	------	22	Shot in the army.		
	59					
	38	All good	28	Chronic	------	Good.
Sisters—No., 3	54					
	57	Both good	3 years	Burned to death.		
Father's mother	Don't know any thing about them.					
Father's father						
Mother's mother						
Mother's father						

In giving the cause of death avoid all indefinite terms, such as "general debility," "change of life," "fever," "exposure," &c. If the word child-birth be used, how long after delivery did death occur, and were there any symptoms of disease of the chest, such as cough, expectoration, &c.?

12. Which parent does the said party most resemble in appearance and constitution? Mother.

13. Is the said party now insured in this company or has he ever been? If so, state numbers of policies and amount. No.

14. Has the said party any other insurance on his life; if so, where and for what amounts? No other.

15. Has any proposal or application to insure the life of said party ever been made to any company or agent upon which a policy has not been issued? If so, state full particulars. No.

16. Has any physician given an unfavorable opinion upon the life of said party with reference to life insurance? If so, state particulars. No.

17. Where has the said party resided (during summer and winter) during the last ten years? Iowa.

18. (A.) Name and residence of the said party's usual medical attendant. A. Has none.

(B.) And of his last medical attendant. B. —.

(C.) Or, if none has been employed, of some other medical person to be referred to for information as to health. C. Dr. J. N. Medbury, Webster City, Ia.

19. Name and residence of an intimate friend of the said party not interested in the proposed insurance, to be referred to for similar information as to health. Charles Fenton, Webster City, Ia.

20. Name, residence, and occupation of the person in whose favor the insurance is proposed and relationship to the said party whose life is proposed to be insured. Myself, or, in case of death, to be equally divided between legal heirs.

21. Is the said party or are the parties signing this application aware that any untrue or fraudulent answers to the questions in this application, or any suppression of facts in regard to the present or past state of health, habits of life, or condition of the person whose life is hereby proposed for insurance, will vitiate any policy which may be issued on this application and forfeit all payments which may be made thereon? Yes.

22. Has the said party or have the parties signing this application carefully read the questions and the answers thereto? Yes.

23. Sum to be insured, $5,000; premium, $190.00; term, 15 years; plan, A, tontine, 15 years, semi-annually.

It is hereby affirmed and declared that in this application no circumstance or information touching the past or present state of health, habits of life, or condition of said party has been concealed or withheld which may render an assurance on the life of said party more than usually hazardous or with which the directors of the Continental Life Insurance Company ought to be made acquainted.

It is also hereby declared that the person in whose favor this insurance is proposed, as stated in this application, ha- an interest in the life of the said party whose life is hereby proposed for insurance to the full amount of the said sum of five thousand dollars.

And it is hereby covenanted and agreed that the statements and representations contained in this application and declaration shall be the basis of and form part of the contract or policy of insurance between the said party or parties signing this application and the said Continental Life Insurance Company, which statements and representations are hereby warranted to be true, and any policy which may be issued upon this application by the Continental Life Insurance Company and accepted by the applicant shall be so issued and accepted upon the express condition that if any of the statements or representations in this application are in any respect untrue, or if any violation of any covenant, condition, or restriction of the said policy shall occur on the part of the party or parties signing this application, then the said policy shall be null and void, and all moneys which may have been paid on account of said policy shall be forfeited to the said company.

And it is hereby further covenanted and agreed that the officers of the said company at the home office of the said company, in

Hartford, Conn., alone shall have authority to determine whether or not a policy of insurance shall be issued on this or any application or whether or not any insurance shall take effect under this or any application.

And it is hereby further covenanted and agreed that no statements or representations made or given to the person soliciting this application for a policy of insurance or to any other person shall be binding on the said company, unless such statements or representations be in writing in this application when the said application is received by the officers of the said company at the home office of the said company, in Hartford, Conn.; and it is hereby further agreed that under no circumstances shall the policy be in force until the first premium, as stated in the policy, shall have been paid during the lifetime of the said party whose life is hereby proposed for insurance to the company or to an agent duly authorized by the company to receive payments of premiums, and that no premium or installment of premium shall be considered as paid unless a receipt shall have been given therefor at the time of payment duly signed by the secretary or president of the said company.

Dated at Jewell Junction, Iowa, this 2 day of Jan'y, 1884.

RICHARD STEVENS, *Applicant.*

—— ——, *Party to be Insured.*

Witness to the signing hereof:
I. I. BOAK.

[On the margin:] Recommended by S. Marks, agent.

☞ The application should be signed by the party for whose benefit the insurance is effected or in behalf of that person and witnessed by the agent.

A husband may sign for his wife, thus: "Ellen White, by John White."

If for the benefit of minor children, "John White, guardian (or trustee), for Anna B., Alice M., and Mary White, my children (or children of —").

Form 152

2

Provisions and Requirements Referred to in this Policy.

1. That this policy is issued under the tontine plan, the particulars of which are as follows:

2. That the tontine period for this policy shall be completed on the 12th day of January, in the year eighteen hundred and ninety-nine.

3. That no dividend shall be allowed or paid upon this policy unless the person whose life is hereby assured shall survive the completion of its tontine period as aforesaid and unless this policy shall be then in force.

4. That all surplus or profits derived from such policies on the

tontine plan as shall not be in force at the date of the completion of their respective tontine periods shall be apportioned equitably among such policies as shall complete their tontine periods.

5. That upon the completion of the tontine period, on Jan'y 12th, 1899, provided this policy shall not have been terminated previously by lapse or death, the legal holder or holders of this policy shall have the option either, first, to withdraw in cash this policy's entire share of the assets (*i. e.*, the accumulated reserve and surplus apportioned by this company to this policy), which share this company guarantees shall not be less than fourteen hundred ninety-five and $\frac{5}{100}$ dollars, in addition to the surplus apportioned; secondly, to convert the same into a paid-up policy for an equivalent amount, provided always that if the amount of said paid-up policy shall exceed the original amount of the assurance a satisfactory certificate of good health from one of the company's medical examiners shall be required; thirdly, to continue the assurance for the original amount and apply the entire surplus or profits to the purchase of an annuity to reduce the subsequent premiums falling due upon this policy, provided that in any year in which the amount derived from such annuity, together with the annual dividend on this policy, shall exceed the amount of premium due thereon the excess shall be paid in cash to said Richard Stevens or assigns; or, fourthly, to withdraw in cash the share of the accumulated surplus apportioned by said company to this policy and continue the policy in force on the ordinary plan; but if no notice in writing shall be given to the company of the way elected in which to apply the surplus or profits within ninety days after the completion of the tontine period, then the surplus or profits shall be applied in the third way just mentioned.

6. That previous to the completion of its tontine period this policy can have no surrender value in cash or in a paid-up policy.

7. That in the payment of premiums upon this policy a grace shall be allowed of two months, provided always that whenever advantage is taken of this grace a fine shall be paid to the company at the rate of six per cent. per annum for the time deferred.

8. The insured shall not, without the consent of the company previously obtained in writing, pass beyond the settled limits of the United States (excepting into the settled portions of the Dominion of Canada, or, by the usual routes and means of public conveyance, to those portions of Europe lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich); nor, without such previous consent, between the first day of July and the first day of November, to those parts of the United States which lie south of the thirty-second parallel of north latitude or south of the parallel of thirty-six degrees and thirty minutes of north latitude within twenty-five miles of the Mississippi river or one hundred miles of the Atlantic coast; nor enter upon a voyage upon the high seas (except as a passenger, by the usual routes and means of public conveyance, between any Atlantic ports in the United States within the before-mentioned limits or between such last-mentioned ports and any Atlantic port in Europe lying north of the forty-second parallel of north latitude); nor, as a mar-

iner, engineer, fireman, conductor, brakeman, or employee in any capacity, enter upon service on any sea, sound, inlet, river, lake, or railroad; nor enter into any military or naval service whatsoever (the militia not in actual service excepted); nor, without such previous consent, be personally employed in the manufacture or transportation of gunpowder or fireworks or of highly inflammable or explosive substances, or in submarine operations, mining, or blasting.

9. Death in consequence of a duel or of the violation of law is not a risk assumed by the company in this contract, nor is death by his own hand, sane or insane, if occurring within three years from the date hereof.

10. All premiums are due in Hartford, Connecticut, at the date named in the policy, but at the pleasure of the company suitable persons may be authorized to receive such payments at other places, but only on the production of the company's receipt therefor signed by the president or secretary and countersigned by the person to whom the payment is made. No payment made to any person except in exchange for such receipt will be recognized by the company. All premiums are considered payable annually in advance. When the premium is made payable in semi-annual or quarterly installments that part of the year's premium, if any, which remains unpaid at the maturity of this contract shall be regarded as an indebtedness to the company on account of this contract and shall be deducted from the amount of the claim, and if any premium or installment of a premium on this policy shall not be paid when due this policy shall be void, and no credit for surplus accumulated on this policy shall be deemed applicable to the payment of any premium.

11. The contract between the parties hereto is completely set forth in this policy and the application therefor, taken together, and none of its terms can be modified nor any forfeiture under it waived except by an agreement in writing signed by the president or secretary of the company, whose authority for this purpose will not be delegated.

12. If any statement made in the application for this policy be in any respect untrue this policy shall be void and all payments which shall have been made to the company on account of this contract shall belong to and be retained by the company, provided, however, that discovery of the same must be made by the company and notice thereof given to the assured within three years from the date hereof.

13. The age of the person upon whose death this contract matures will be admitted by the company on due proof, but if not so admitted the amount of insurance payable under this policy at its maturity shall in no case be more than the premium charged would have purchased by the company's rates in use at the date hereof for such person's true age.

14. That no claim shall exist under this policy unless due notice and satisfactory proof of death shall be presented in writing to the officers of said company, at the home office, in Hartford, Conn.,

within two years after the death of the person upon whose death this contract matures, and that the time within which any suit shall be brought against said company on any claim under this policy is hereby limited to two years from the time when the right of action accrues.

[Endorsed:] Copy. No. 31328. Tontine policy. Continental Life Insurance Company of Hartford, Conn. Assurance on the life of Richard Stevens. Specimen. Amount, $5,000. Date, Jan. 12th, 1884. Term of life. Annual premium, $190.00. Age, 45. S. Marks, agent. Register —, page —. Edition Dec. 1, 1881. (Jan., 1883.) 1,000. Notify the home office of any change in P. O. address.

26 In the United States Circuit Court in and for the Northern District of Iowa, Central Division.

W. J. CHAMBERLAIN, Administrator of the Estate of Richard Stevens, Deceased,
vs.
THE CONTINENTAL LIFE INSURANCE COMPANY. } June Term, 1886.

Bill of Exceptions.

Be it remembered that at the June, 1886, term of said circuit court and on the first day of said term, to wit, the 15th day of June, 1886, this cause came on for hearing on the demurrer filed by the defendant to the replication of the plaintiff on January 21st, 1886; whereupon the court overruled said demurrer; to which ruling the defendant then and there excepted.

And be it further remembered that afterwards, during said term, to wit, on the 17th day of June, 1886, this cause came on for trial before the court and a jury on the issues joined therein, and the plaintiff, to sustain the issues on his part, introduced the witness, I. I. Boak, who testified that he was the agent of the defendant and was acting under a written contract, which written contract authorized him to take applications for insurance in the defendant company, and that he took the application of the decedent, Stevens, for insurance in the defendant company and delivered the policy in suit to the said Stevens.

27 And said plaintiff, to sustain the issues on his part, offered in evidence a certain contract in writing between said defendant and said I. I. Boak; which contract is as follows:

Form A–10–1. *Agreement.*

This agreement, made this twentieth day of October, eighteen hundred and eighty-three, between the Continental Life Insurance Company of Hartford, Connecticut, of the first part, and Ilo I. Boak, of Webster City, county of Hamilton and State of Iowa, of the second part, witnesseth:

I. That the said Continental Life Insurance Company, in consid-

eration of one dollar, the receipt of which is hereby acknowledged, and of other valuable considerations, doth hereby make and appoint said Ilo I. Boak their district agent in and for the counties of Emmet, Kossuth, Winnebago, Hancock, Palo Alto, Pocahontas, Humboldt, Wright, Hamilton—excepting local agency of J. R. Sterling at Webster City—Webster, Calhoun, Carroll, Greene, and Boone, in the State of Iowa, with authority to prosecute the business of soliciting and procuring applications for life insurance policies within and throughout said territory, and to deliver policies issued thereon and to receive and collect the first premiums therefor; also to receive and collect the renewal premiums accruing thereon—only, however, as renewal receipts therefor shall be furnished to him signed by the secretary of said company, but always subject to the instructions of the officers thereof and agreeably with the rules and regulations established by said company.

II. That the said company agree to pay said agent commissions on all the premiums for policies procured by him or through assistants or subagents appointed by him and in his name, for whose fidelity he shall be responsible to the said company, and which premiums shall have been collected and paid over to said company as follows, to wit:

On the first regular annual premiums.	On renewal premiums.
Life participating:	
1. Twenty or more payments	45 per cent.—5 per cent.
2. Fifteen and less than twenty payments.	35 per cent.—5 per cent.
3. Ten and less than fifteen payments	25 per cent.—5 per cent.
Endowment participating:	
4. Twenty or more payments	30 per cent.—5 per cent.
5. Fifteen and less than twenty payments.	25 per cent.—5 per cent.
6. Ten and less than fifteen payments	20 per cent.—5 per cent.
Life non-participating:	
7. Twenty or more payments	20 per cent.—2½ per cent.
8. Fifteen and less than twenty payments.	15 per cent.—2½ per cent.
9. Ten and less than fifteen payments	10 per cent.—2½ per cent.
Guaranty income, participating & non-participating:	
10. Ten or more payments	40 per cent.—5 per cent.
11. Renewal term	40 per cent.—5 per cent.

On the first regular annual premiums.	On renewal premiums.
Short term:	
12. One to twenty payments, inclusive, a uniform commission of—	12½ per cent.
13. On premiums collected on policies or renewals not procured by him or his assistants under this agreement, but given to him for collection.	2½ per cent.
14. On the apply value of policies except single payments.	10 per cent.—5 per cent.
15. On single-payment life policies (Table "K"), cash payment.	40 per cent., $1.50 per $1,000 ins.

Commissions on all premiums collected and paid over as aforesaid upon policies issued upon applications other than as above stated shall be determined by said company.

And said commissions shall be due and payable on the premiums collected only when said premiums are paid to said company, and no commission shall be charged or will be allowed on extra premiums or on interest which shall accrue or which shall be received in advance for credit on any payment of premiums.

III. That the said company agree to pay the said Ilo I. Boak on the business secured to said company by said Ilo I. Boak the beforementioned renewal commission on second, third, fourth, and fifth years' renewal of all policies taken under this agreement as the premiums shall be paid over to said company, unless said Ilo I. Boak shall sooner forfeit his claim to said commission, as provided for in article IX, or by directly or indirectly engaging with or working for or being interested in any other life insurance company, individual, or firm in life insurance business while he shall receive or claim to receive compensation or commission under this contract; but the said company reserve the right to collect said renewal premiums, reserving to themselves 2½ per cent. of the said premiums for so collecting.

IV. That the said company do agree to pay all postage, exchange on drafts remitted to said company, expressage upon printed and other matter transmitted between said company and said agent, and medical examiner's fees when accompanied with vouchers, and to furnish such books, circulars, and stationery as they may deem necessary for the prosecution of the business, but no other expenses, unless authorized by the officers of the company in writing.

29 V. And now the said Ilo I. Boak, in consideration of all the foregoing, doth agree that he will devote all his time, energy, and business talent to the interests of said Continental Life Insurance Company in faithfully and earnestly prosecuting said

business throughout the whole of said territory by himself and assistants and subagents, appointed by him and in his name, and that he will faithfully perform all duties and services of his agency, under the direction of the officers of the company, and in conformity with its rules and regulations, and hold himself responsible to the said company for the fidelity and honesty of all such assistants and subagents.

VI. That on or before the fifth day of each month during the continuation of this agreement the said Ilo I. Boak shall make and send to the office of the company, in Chicago, a true account of all collections and business intrusted to his care, and remit the same, together with all notes, vouchers, and cash received by him since the last preceding report, and shall make like report and remittance as much oftener as he may be required by the directors, retaining only the commissions due, according to this agreement, and such expenses as have been authorized by said company, and promptly return any and all books, records, papers, vouchers, and other documents in his hands pertaining to the business of said company at the termination of this agreement or whenever requested so to do by said company.

VII. That said Ilo I. Boak agrees that the payment of said commissions shall be full compensation for his services and the services of all his subagents and assistants.

VIII. That the said Ilo I. Boak agrees to furnish to and maintain with said company a sufficient and satisfactory bond in the sum of one thousand dollars for the faithful performance of all duties pertaining to this agency, and for the prompt payment of all moneys and securities received by him or his subagents or assistants.

IX. That this agreement shall take effect on the 20th day of October, eighteen hundred and eighty-three, and continue in force for the full period of five years thereafter; but it is understood and agreed that, in case of neglect or refusal of the said Ilo I. Boak to send said account, or to make the remittances aforesaid, as specified and required in the sixth article foregoing, or when called upon or demanded by the directors to make good any deficiency in his returns, or whenever, in consequence of neglect to attend to the collection of renewals or of conduct prejudicial to the best interests of said company, it shall appear to them necessary to do so, the company shall have the right to terminate this agreement and agency and revoke the appointment of said Ilo I. Boak, and he shall forfeit all right, title, and interest in and to any of said commissions, and all said commissions (both first and renewal) shall revert and belong to said company.

X. The party of the second part agrees to deposit all the money received by him for or on account of said company in Hamilton Co. Bank, in the city of Webster City, Iowa, in his name as agent of the aforesaid company, separate and distinct from his private deposit or account.

XI. It is mutually understood and agreed that if the said Ilo I. Boak shall neglect to work the aforesaid territory to the satisfaction of the officers of said company, then the company may place other

and special agents therein to canvass for and solicit risks, deliver policies, and report directly to the company independently of the said agent, who shall have no interest in or commissions upon the results of their labors; but this shall not otherwise affect the provisions herein for renewal commissions to said agent.

XII. And it is further mutually agreed that if any policy-holder of the company shall remove from or into the territory of the party of the second part the company shall have the right to transfer collection of premiums on his policy to such agency as shall be most convenient for the insured, and the said party of the second part shall have only 2½ per cent. renewal commissions on policies so transferred by said company, though he may before have had claim thereto.

XIII. The said agent has no authority, in the name of said company, to make, alter, or discharge any contract, or waive any condition or agreement in or any forfeiture of any policy, or to receive any money for said company, except as stated in the first article of this contract, nor to receive any overdue payment of premium, whether it be the regular annual premium or a deferred portion thereof, unless specially authorized so to do, in writing, by the president or secretary of said company; and said agent shall not interfere with nor have any interest in any business done under any contract now existing between said company and other parties in and for said territory.

XIV. It is further agreed by and between the parties that the said Ilo I. Boak shall be allowed for business secured by him for said company on the net-term rate plan (Table L), payable on first year of policies only, compensation as follows:

On policies of	$500	$3.50.	On policies of	$2,500	$10.50.
" " "	1,000	5.00.	" " "	3,000	12.00.
" " "	1,500	7.50.	" " "	4,000	13.50.
" " "	2,000	9.00.	" " "	5,000	15.00.

XV. And it is also agreed that upon business done jointly by said Ilo I. Boak and any of said company's agents said Ilo I. Boak shall be entitled to one-half only of the first year's commissions mentioned in section II of this agreement.

30½ XVI. To assist in defraying the traveling expenses of said Ilo I. Boak company will allow 10 % additional commission upon 1st premiums of the classes of policies numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 15 in foregoing scale of commissions.

In witness of all the foregoing the parties hereto have set their hands, the said Continental Life Insurance Company, by its superintendent of agencies, and the said Ilo I. Boak, by himself, the day and year first herein written.

CONTINENTAL LIFE INS. CO.
OF HARTFORD,
By H. P. BARTON, *Sol. A.*
I. I. BOAK.

And said plaintiff also offered and read in evidence the policy of insurance sued on in this action, which policy was dated January 12th, 1884, issued upon the life of Richard Stevens for the sum of five thousand dollars, promising to pay to said Stevens, his administrators or assigns, said sum within ninety days after satisfactory proofs of the death of said Stevens shall have been furnished to said company, at their said office, in Hartford, Conn. Said policy had attached a copy of the application for insurance, said policy and application being as follows:

(The copy of the policy and application for insurance is attached hereto, marked Exhibit "A.")

It was admitted that proper proofs of the death of Richard Stevens had been made prior to the commencement of this suit, and that said Stevens died at Jewell Junction, on April 9th, 1884.

The defendant, to sustain the issues on its part, introduced and read in evidence the application for insurance upon
31 which the policy in suit was issued, dated January 2nd, 1884, signed by Richard Stevens; which said application contained, among others, the following questions and answers, to wit:

"Has the said party any other insurance on his life; if so, where and for what amounts?

Ans. "No other."

The following declarations and agreements were embraced and contained in said application, viz:

"It is hereby affirmed and declared that in this application no circumstance or information touching the past or present state of health, habits of life, or condition of said party has been concealed or withheld which may render an assurance on the life of said party more than usually hazardous or with which the directors of the Continental Life Insurance Company ought to be made acquainted.

And it is hereby covenanted and agreed that the statements and representations contained in this application and declaration shall be the basis of and form part of the contract or policy of insurance between the said party or parties signing this application and the said Continental Insurance Company, which statements and representations are hereby warranted to be true, and any policy which may be issued upon this application by the Continental Insurance Company and accepted by the applicant shall be so issued and accepted upon the express condition that if any of the statements or representations in this application are in any respect untrue, or if any violation of any covenant, condition, or restriction of the said policy shall occur on the part of the party or parties signing this application, then the said policy shall be null and void, and all moneys which may have been paid on account of said policy shall be forfeited to the said company.

And it is hereby further covenanted and agreed that the officers of the said company, at the home office of the said company, in Hartford, Conn., alone shall have authority to determine whether

or not a policy of insurance shall be issued on this or any application, or whether or not any insurance shall take effect under this or any application.

And it is hereby further covenanted and agreed that no statements or representations made or given to the person soliciting this application for a policy of insurance or to any other person shall be binding on the said company unless such statements or representations be in writing in this application when the said application is received by the officers of the said company, at the home office of the said company, in Hartford, Conn."

32 It was agreed between the parties on the trial of said cause that said deceased, Richard Stevens, had at the time of his death the following insurance in co-operative companies, viz:

$2,000 in the V. A. S. Fraternity, dated April 2nd, 1883.

$5,000 in Mutual Relief Association of Cedar Rapids, Iowa, dated Nov. 14, 1883.

$5,000 in the Union Mutual Association of Waterloo, Iowa, dated Dec. 3rd and 27th, 1883.

$2,000 in the Guarantee Life Association of Des Moines, dated January 29th, 1884.

$2,000 in the Northwestern Mutual Aid Association of Marshalltown, Iowa, dated Jan'y 22, 1884.

The defendant then offered in evidence and read to the jury the deposition of JAMES S. PARSONS, who testified as follows:

"Am president of the defendant company and have been since 1873. No one but the president and secretary could finally pass upon the sufficiency of an application, and there was no other office at the date of the issuance of the policy in suit where an application could be approved or insurance made binding upon the company than the office of the defendant at Hartford, Conn. Soliciting agents have no other power or authority than to solicit and transmit applications for insurance and to deliver policies and collect premiums as the policies and receipts may be sent them from the home office. No other person, except the president and secretary, has or ever has had any such power or authority as to make, alter, or discharge
33 any contract of insurance, and particularly the contract of insurance in question, or waive any condition or agreement in it or any forfeiture of said policy.

Cross-examination:

This company, in its consideration of an application for insurance, regards the total amount of insurance upon the life of an applicant as a most important element, which must be fully disclosed in every application. The co-operative plan is regarded by this company as insurance in passing upon applications, and the amount of insurance under such plan is regarded by us as a more significant factor in measuring the moral hazard than the same amount of insurance under any other plan. No agent has ever been instructed to disregard insurance under the co-operative plan."

The defendant then offered in evidence and read to the jury the deposition of ROBERT E. BEECHER, who testified as follows, viz:

"Am secretary of defendant and have been since 1873."

Testified substantially the same as James S. Parsons.

Thereupon the plaintiff, to sustain his cause of action and in rebuttal, offered the evidence of I. I. BOAK, as follows:

Q. Mr. Boak, is that the original application made to the company for the insurance on Mr. Stevens' life?

A. Yes, sir.

Q. In whose handwriting is that?

A. It is mine—that is, all relating to the application proper.

34 Q. It is all in your handwriting except the signature?

A. Except the physician's certificate.

Q. I didn't speak of the physician's certificate; I refer to the filling out the answers to the questions.

A. In my handwriting; yes, sir.

Q. At the time you took this application you may state the conversation between Stevens and yourself in reference to what insurance he had on his life; state all that was said.

The defendant objects, as this man has no authority to state anything aside from the application. No evidence can be received aside from the application, and this man had no authority from the company to do more than receive the answers to these questions; also the contract provides that no statement or representations shall be introduced in evidence except that in writing in the application when received at the home office in Connecticut.

Overruled; defendant excepts.

Q. I ask you particularly with reference to the question, "Have you any other insurance on your life?"

A. I asked him the question if he had any other insurance, as printed in the application and as we ask every applicant, and he told me he had certain certificates of membership with certain co-operative societies, and he enumerated different ones and said he did not know whether I would consider that insurance or not. I told him emphatically that I didn't consider them insurance, and we had considerable conversation about it. He wanted to know my authority for saying I didn't consider them insurance. I gave him my authority—gave him my reasons—and he agreed with me that these co-operative societies were in no sense insurance companies, and in that light I answered the question "no."

Q. Did you tell him at that time that the proper answer was "no" after he had stated the facts?

A. I did.

Defendant moves to strike out the answer for the objections formerly given.

Overruled; defendant excepts.

Q. Who wrote in the answer in there?
A. I did.

The foregoing testimony was all the evidence offered or introduced on the trial of said issues.

35 Whereupon the defendant requested the court to give the jury the following instructions:

Instructions Requested by Defendant.

1. You are instructed that if you find that the application in this case contained a stipulation that no statement or representation made or given to the person soliciting this application should be binding on the company unless the statement or representation was in writing in the application when received by the officers of the company at the home office, in Hartford, and you further find that in answer to the question as to whether or not Stevens had other insurance on his life at the time of making application to the defendant he answered, "No other," you are directed to disregard any parol testimony tending to show any other statement or any different state of facts to the agent soliciting the insurance, such statements or representations not being written in the application when received by the officers at the home office.

2. You are instructed that if at the time the application was received by the officers of the company at the home office, in Hartford, the application showed that in answer to the question as to whether or not the applicant, Richard Stevens, had other insurance on his life the answer was "None other," and in truth and fact he had a large amount of insurance then existing upon his life, which facts were not disclosed in writing in the application, then the defendant is not liable in this action and your verdict should be for the defendant.

36 And the court thereupon refused to give each of said instructions; to which refusal to give each of said instructions the defendant then and there excepted; and the court thereupon instructed the jury upon the issues involved as follows:

Instructions to the Jury.

GENTLEMEN OF THE JURY: In this case W. J. Chamberlain, as administrator of the estate of Richard Stevens, deceased, seeks to recover against the defendant, The Continental Life Ins. Co., a verdict at your hands for the amount of a policy of insurance that was issued by the defendant company to Richard Stevens in the amount of $5,000.

In the petition it is averred and it is not disputed in the evidence that the defendant company, on or about the 12th day of January, 1884, issued a policy of insurance upon the life of Richard Stevens, and the company agreed to pay to the assured, his administrators or legal representatives, the sum of $5,000 within ninety days after

due proof of the death of the assured was furnished to the company, provided the assured died within the lifetime of the policy.

It is not in dispute between the parties that on April 9th, 1884, Richard Stevens did die, and that this policy of insurance was in force at that time, or, in other words, to use an insurance expression, the policy was then in life unless it was rendered void on grounds claimed by debt.

37 Proof of the fact that the policy was issued, that the same was in force at the time of the death of the insured, that the party named in the policy died, and that the proper notice of his death and proofs of his death were furnished to the company would make out what we term a *prima facie* case in favor of the plaintiff.

Now, then, the proof in this case makes out a *prima facie* case in favor of the plaintiff, and, consequently, the verdict should be for the plaintiff for the full amount of the policy, unless you find that some one or more of the defenses pleaded by and relied upon by the defendant has been made out. Now, in the answer of the defendant several defenses are made or pleaded.

The first one is that Richard Stevens, the party who was insured, when applying for this insurance, in his answer to the question contained in the application to the effect, "Has said party any other insurance on his life, if so; where and for what amount?" answered that he had no other insurance.

Now, the evidence in this case shows that, in fact, at the time the insurance was issued by the defendant company Richard Stevens did have other insurance upon his life. It is true that the insurance was in what are termed co-operative companies, or, as they are sometimes called, mutual benefit associations, but still I charge you that if he was insured in this character of insurance companies it was, in fact, in the nature of insurance upon the life of the deceased, and that he was bound in good faith to tell the facts in regard

38 thereto to the company when he made his application and obtained his insurance in the defendant company. It is the duty of a person who applies for insurance upon his life to state fully and fairly all the facts that may bear upon the question of the desirability of the risk which he is asking the company to assume, and these companies have a right to do as they do—to put in the written application certain questions which they require the applicant to answer fully and fairly, and the duty and obligation lies upon the person to fully answer these questions which are put to him, because the applicant is bound to know that it is largely upon the answers that he makes to these various questions that the officers who are charged with the duty of determining whether they will accept the application rely in determining whether the company will or will not assume the risk.

The duty is, therefore, as I have said, gentlemen, placed upon the applicant to state fully and fairly all the facts that exist in regard to any one of the several matters that he is interrogated about in the questions contained in the application.

You will find in the application which has been introduced in evidence this question: "Has said party any other insurance on his

life; if so, where and for what amount?" and as I have said it was the duty of the applicant to make full and fair answer thereto, and if he was insured in any co-operative company it was his duty to say so, and if he failed to do so then under the terms of this policy this would constitute a defense defeating a recovery on the policy.

39 But against this defense on the part of the company the plaintiff claims in his replication and in his proof in support of the allegations of his replication that Stevens, when he signed this application at the time it was filled out, stated the facts to Mr. Boak, the soliciting agent of the defendant company. The evidence adduced tends to show, and I think there is no dispute about that, that the blank application or form was filled out by Mr. Boak, who was the agent of the defendant company, and that all Stevens did was to give the answers to him, stating them orally to the agent, who wrote them down, and then Stevens signed the application.

Now, then, the law of this question is, that if at that time Stevens stated fairly and fully to Boak, the agent of the company, all the facts as they then existed in regard to and about this insurance in the co-operative companies, or if, in other words, Stevens fully informed Boak, the agent of the company, that he had these certificates of insurance in these co-operative companies, and then Boak wrote down the answer that he had no other insurance, on the theory that they did not constitute insurance within the meaning and understanding of the questions as put in this application, then this mistake lies at the door of the insurance company and not at the door of the assured. In other words, if Stevens fully stated the facts to the agent, Boak, and the agent came to the conclusion that certificates of this character in co-operative companies did not mean insurance within the view which the defendant company would take of insurance, and in that view wrote down this

40 answer, that there was no other insurance, then it was the agent who made the mistake, and for that mistake the responsibility cannot be placed upon the assured.

If, therefore, you find under the evidence that Stevens did state fully and fairly the facts in regard to these different insurances in co-operative companies to the agent, and the agent knowing all these facts wrote the answer in the application as it is contained therein, the defendant is now estopped from making defense by reason of the fact that Stevens did have insurance in these co-operative companies.

And thereupon, and before the jury retired to deliberate on their verdict, the defendant excepted to the foregoing charge of the court as follows:

Exceptions.

1. The defendant excepts to that portion of the charge of the court in which the jury were instructed that if Stevens stated the facts fully and fairly to Boak, the company's agent, at the time of making the application and Boak wrote down the answers, then the

mistake or misrepresentation lay at the door of the company defendant and not of Stevens.

2. And defendant further excepts to that part of the charge that in which the jury were instructed that if the agent, Boak, took the view that the co-operative insurance then on the life of Stevens was no insurance and so wrote the answer, the defendant is now estopped from claiming there was any falsity in the answers in the application.

41 3. Defendant also at the time excepts to the refusal of the court to give the 1st and 2nd instructions asked by the defendant to the jury, and excepts to the refusal to give each of said instructions.

And to the end that the matters & things herein recited may fully appear of record in this cause the defendant tenders this bill of exceptions and prays that the same may be signed & be made part of the record of this cause, which is done this 19th day of June, 1886.

O. P. SHIRAS, *Judge.*

41½ [Endorsed:] Filed June 19, 1886. A. J. Van Duzee, cl'k, by W. H. Johnston, deputy.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the northern district of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you, between W. J. Chamberlain, administrator of the estate of Richard Stevens, deceased, and The Continental Life Insurance Company of Hartford, Connecticut, a manifest error hath happened, to the great damage of the said The Continental Life Insurance Company of Hartford, Connecticut, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Seal Circuit Court U. S., Northern District of Iowa, Fort Dodge.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 25 day of August, A. D. 1886.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa,
By W. H. JOHNSTON, *Deputy.*

Allowed.

O. P. SHIRAS, *Judge.*

[Endorsed:] Filed Aug. 25th, 1886. A. J. Van Duzee, cl'k, by W. H. Johnston, deputy.

43 UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. J. Chamberlain, administrator of the estate of Richard Stevens, deceased:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the northern district of Iowa, central division, in a suit wherein The Continental Life Insurance Company of Hartford, Connecticut. is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Fort Dodge, in said district, this 25 day of August, 1886.

O. P. SHIRAS, *Judge.*

44 We accept due and legal service hereof at Webster City, Iowa, this 11th day of September, A. D. 1886.

CHASE & CHASE,
Attorneys for W. J. Chamberlain, Administrator of the Estate of Richard Stevens, Deceased.

[Endorsed:] Filed Sept. 11th, 1886. A. J. Van Duzee, cl'k, by W. H. Johnston, deputy.

45 In the Supreme Court of the United States.

CONTINENTAL LIFE INSURANCE CO., Appellant, *vs.* W. T. CHAMBERLAIN, Administrator, etc., Appellee.	October Term, 1886.

Assignment of Errors.

The appellant, The Continental Life Insurance Company of Hartford, Conn., respectfully alleges that there is manifest error upon the face of the record in this cause, committed by the court below, in the following particulars:

1. The court erred in overruling the appellant's demurrer to the appellee's reply, filed herein, for each of the reasons set out in said demurrer.

2. The court erred in overruling said demurrer for the reason that the contract between the applicant, Richard Stevens, and appellant, provided that no statements or representations made to the agent at the time of making the application for the insurance would have any force or effect whatever unless in writing in the application itself when received by the officers of the appellant, and the reply alleged statements and representations made at the time not contained in the application, to wit:

(*a.*) "That at the time said application was taken the said Stevens informed the said Boak of all the companies that he had certificates in and the amount of each."

(*b.*) "That the said agent of the defendant then wrote the answer to said question in said application and informed the said Stevens that the company did not regard co-operative companies as insurance companies, and that question should be so answered."

3. The court erred in admitting the evidence of I. I. Boak as to the statements and representations made to and by the applicant, Richard Stevens, at the time his application was taken, for the reasons stated in the last assignment and because incompetent and immaterial. The testimony is as follows:

(*a.*) "He (Stevens) told me that he had certain certificates of membership with certain co-operative societies, and he enumerated different ones, and said he did not know whether I would consider them as insurance or not. I told him emphatically that I didn't consider them as insurance."

(*b.*) "He wanted to know my authority for saying I didn't consider them insurance. I gave him my authority—gave him my reasons—and he agreed with me that these co-operative societies were in no sense insurance companies, and in that light I answered the question 'no.'"

(*c.*) "Q. Did you tell him that the proper answer was 'no" after he had stated the facts?

Ans. I did."

4. The court erred in admitting the testimony quoted in specifications (*a*), (*b*), and (*c*), in the last assignment, for that the power of the agent to bind the appellant was expressly limited in the application in evidence, and this limitation was within the knowledge of Richard Stevens, he having signed the application, and that the said testimony, having been objected to at the time, the objections overruled, and exceptions taken by the appellant.

5. The court erred in not striking out, on the motion of appellant, all the testimony of I. I. Boak, as shown in assignment, specifications (*a*), (*b*), and (*c*), and for the reasons stated in assignments 2, 3, and 4.

6. The court erred in overruling the motion for a new trial because the testimony of I. I. Boak, as set forth above, was
46 improperly accepted and allowed to go to the jury over the objections of the appellant; and, further, because the court erred in refusing the first and second instructions asked by appellant, as shown in assignments 7 & 8, and also erred in instructing the jury, as shown in assignment 9; to which refusals and instruc-

tions given the appellant excepted at the time and before the jury retired.

7. The court erred in refusing to give to the jury the following (first) instruction asked by the appellant, to wit:

"You are instructed that if you find that the application in this case contained a stipulation that no statement or representation made or given to the person soliciting this application should be binding on the company unless the statements or representations was [were] in writing in the application when received by the officers of the company at the home office, in Hartford, and you further find that in answer to the question as to whether or not Stevens had other insurance on his life at the time of making application to the defendant he answered, 'No other,' you are directed to disregard any parol testimony tending to show any other statement or any different state of facts to the agent soliciting the insurance, such statements or representations not being written in the application when received by the officers at the home office;" because if the above facts were found, then Stevens had knowledge that the agent's power to bind the company extended no further than to write down the statements made to him and that true answers must be made thereto; also, because if the facts were found as stated in the instruction, then it was a complete defense to the plaintiff's action in law, and the jury should have been so instructed.

8. The court erred in refusing the following instruction (second) asked by appellant, to wit:

"You are instructed that if at the time the application was received by the officers of the company at the home office, in Hartford, the application showed that in answer to the question as to whether or not the applicant, Richard Stevens, had other insurance on his life the answer was 'None other,' and in truth and fact he had a large amount of insurance then existing upon his life, which facts were not disclosed in writing in the application, then the defendant is not liable in this action, and your verdict should be for the defendant," because the applicant, Stevens, was bound to make true answers to the questions asked him in the application, and if he answered untruly there was no liability upon the policy, and also because the power to bind the company by statements not in writing in the application was taken away from the agent Boak by the agreement of the parties and his knowledge of such facts was not the knowledge of the appellant.

9. The court erred in giving to the jury the following portion of his charge, to wit:

"Now, then, the law of this question is that if at the time Stevens stated fairly and fully to Boak, the agent of the company, all the facts as they then existed in regard to and about this insurance in the co-operative companies, or, if in other words, Stevens fully informed Boak, the agent of the company, that he had these certificates of insurance in these co-operative companies, and then Boak wrote down the answer that he had no other insurance on the theory that they didn't constitute insurance within the meaning and un-

derstanding of the questions as put in the application, then this mistake lies at the door of the insurance company and not at the door of the assured."

(*a.*) Because the contract between Stevens and the appellant was to the effect that no statement or representation not in writ-
47 ing in the application when received by the officers of the company at the home office should not have any force or effect, and the above instruction disregarded this part of the contract; also,

(*b.*) Because the power of the agent, Boak, was limited to writing down the answers and statements given by Stevens, and he had no power to waive any portion of the requirements of the appellants in taking the application.

(*c.*) Because such limitation on Boak's power was brought to the knowledge of the applicant, a copy of the application being attached to the policy taken & delivered to Stevens.

10. The court erred in the following portions of the charge, to wit: "In other words, if Stevens fully stated the facts to the agent, Boak, and the agent came to the conclusion that certificates of this character, in co-operative companies, did not mean insurance within the view which the defendant company would take of insurance, and in that view wrote down this answer that there was no other insurance, then it was the agent who made the mistake, and for that mistake the responsibility cannot be placed upon the assured."

Because of the reasons (*a*), (*b*), and (*c*), shown in the last assignment; because, in view of the limitation in the power of the agent known to the applicant, his mistakes, if any he made in regard to the answers made by Stevens, were not chargeable to the appellant, but to Stevens, and Stevens was bound to know the contents of the application which he signed.

11. The court erred in rendering judgment upon the verdict of the jury because of each of the errors herein specified, from one to ten, inclusive, together with the specifications under each.

TIMOTHY BROWN,
Counsel for Appellant, The Continental Life Insurance Company of Hartford, Conn.

48 [Endorsed:] Continental Life Ins. Company, appellant, *vs.* W. T. Chamberlain, administrator, &c., appellee. Assignment of errors.

[Endorsed:] Sup. Court U. S. 1886, Oct'r term. No. 1047. The Continental Life Ins. Co. of Hartford, Conn., app't, *vs.* W. T. Chamberlain, adm'r, &c. Assignment of errors.

[Stamped:] Office Supreme Court U. S. Filed Oct. 15, 1886. James H. McKenney, clerk.

[Endorsed:] No. —. Law. United States circuit court, northern district of Iowa, —— divison. —— ——, plaintiff, *vs.* —— ——, defendant. Filed ——, 188–. A. J. Van Duzee, clerk circuit court U. S. —— ——, attorney for plaintiff. Brown & Carney, Marshalltown, Iowa, attorney- for defendant. Record ——, page —. Fee

book ——, page —. Judgment for —— rendered in this cause, —— term, 188–.

Endorsed on cover: N. Iowa C. C. U. S. No. 374. The Continental Life Insurance Company of Hartford, Connecticut, plaintiff in error, *vs.* W. J. Chamberlain, administrator of Richard Stevens, deceased. Filed September 30, 1886.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1889.

No. 374

THE CONTINENTAL LIFE INSURANCE COMPANY, of Hartford, Conn.,
Plaintiff in Error.

VS.

W. J. CHAMBERLAIN, Administrator of the Estate of RICHARD STEVENS, (deceased)
Defendant in Error.

In error to the Circuit Court of the United States for the Northern District of Iowa.

ARGUMENT FOR PLAINTIFF IN ERROR.

J. L. CARNEY,
ATTORNEY FOR PLAINTIFF IN ERROR.

Marshall Printing Company, Marshalltown, Iowa.

Supreme Court of the United States.

OCTOBER TERM A. D. 1889.

No. 374

THE CONTINENTAL LIFE INSURANCE COMPANY, of Hartford, Conn.,
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W. J. CHAMBERLAIN, Administrator of the Estate of RICHARD STEVENS, (deceased)
Defendant in Error.

In Error to the Circuit Court of the United States for the Northern District of Iowa.

STATEMENT.

This is an action upon a policy of insurance issued by the plaintiff in error, upon the life of Richard Stevens, on Jan. 12, 1884.

Said Stevens was killed by the cars running over him at Jewell Junction, on the 9th day of April, A. D. 1884, and this action is for the recovery of $5,000, with interest, being the amount of the policy issued by plaintiff in error.

Other defenses than those sought to be brought to the attention of this court, were made on the trial below, such as suicide, etc., but do not appear in this record, being unnecessary.

The policy is what is familiarly known as an "old line" policy with all the provisions and specifications usually found therein. It will be found printed at length as an exhibit to appellee's petition on Printed Record, pages 2, 3, 4, 5, 6, 7, 8 and 9. It also

will be found reprinted as "Exhibit A," to the bill of exceptions, beginning on page 16 of the Printed Record, and extending to page 24 thereof.

At the time of the making of the contract with the plaintiff in error, Richard Stevens had upon his life, insurance in different co-operative or mutual benefit associations to the total amount of $12,000. The amounts, the associations and the dates of the policies are here given: $2,000 in the V. A. S. Fraternity, dated April 2, 1883; $5,000 in Mutual Relief Association, dated Nov. 14, 1883; $5,000 in the Union Mutual Association, dated Dec. 3 and 27, 1883; $2,000 in the Guaranty Life Association, dated Jan. 29, 1884; $2,000 in the Northwestern Mutual Aid Association, dated Jan. 27, 1884.

The above list embraces $4,000, contracts for which were made after appellant's. These amounts and facts were agreed to on the trial. (Pr. Rec., Page 30.)

The said Richard Stevens, in making application for the insurance, which he did in writing on Jan. 2, 1884 (Pr. Rec., Page 6), in answer to the question, No. 14: "Has the said party any other insurance on his life?" Answered, "No other." (Pr. Rec., Page 4.)

Part of the consideration for the issuing of the policy, was the application and each of the statements made therein. (Pr. Rec., Page 2.)

The following agreements were also contained in the application: (Pr. Rec., Page 5.)

And it is hereby covenanted and agreed, that the statements and representations contained in this application and declaration, shall be the basis of and form part of the contract or policy of insurance between the said party or parties signing this application, and the said Continental Life Insurance Co., which

statements and representations are hereby warranted to be true, and any policy which may be issued upon this application by the Continental Life Insurance Company, and accepted by the applicant, shall be so issued and accepted upon the express condition, that if any of the statements or representations in this application are in any respect untrue, or, if any violation of any covenant, condition or restriction of the said policy shall occur on the part of the party or parties signing this application, then the said policy shall be null and void, and all moneys which may have been paid on account of said policy, shall be forfeited to the said company.

In the provisions and requirements attached to, or printed in the policy, is found the following: (Pr. Rec., Page 8.)

The contract between the parties hereto, is completely set forth in this policy, and the application therefor taken together, and none of its terms can be modified nor any forfeiture under it waived except by an agreement in writing signed by the president or secretary of the company, whose authority for this purpose will not be delegated.

It is further and again provided in the section immediately following the one just quoted, that if any statement in the application be untrue, the policy should be void.

Upon this state of facts, the plaintiff in error filed its answer in the court below, averring, that the said Richard Stevens, when he made application for the said insurance had answered the question as to whether he had any other insurance upon his life falsely, in answering "no" thereto, and thereby the policy was void. (See Answer, Pr. Rec., Pages 9 and 10.)

Thereupon the defendant in error filed his replication (Pr. Rec., Page 11), admitting in substance that when said application was made, that the question in regard to other insurance, was answered in the manner stated, and in avoidance thereof, plead, that at said time, and when the application was being made,

that the said Stevens told Boak, the agent soliciting the insurance, that he had other insurance in co-operative companies, and thereupon Boak wrote the answer as given, and informed Stevens that the company did not regard co-operative companies as insurance companies, and that the question should be so answered. The plaintiff in error thereupon filed its demurrer to the replication, basing it upon the following provisions in the application: (Pr. Rec., Page 6.)

> And it is hereby further covenanted and agreed, that no statements or representations made or given to the person soliciting this application for a policy of insurance, or to any other person, shall be binding on the said company, unless such statements or representations be in writing in this application when the said application is received by the officers of the said company at the home office of the said company at Hartford, Connecticut.

By four different assignments, the demurrer raised substantially the same question, *i. e.*, that no statements or representations made to Boak by Richard Stevens, were admissible in evidence, because the application and contract provided that none such should be binding on the company unless they should appear in the application when received by the officers of the company at the home office in Hartford, Connecticut.

This demurrer was at the June term, 1886, overruled by the court, to which ruling the defendant, (plaintiff in error) excepted. (Pr. Rec., Page 12.)

Upon the trial which proceeded in due course, after the overruling of the demurrer, the agent, Boak, was placed upon the stand by defendant in error, and the following proceedings were had as shown by the bill of exceptions: (Pr. Rec., Page 31.)

Question. At the time you took this application, you may state the conversation between Stevens and yourself in reference to what insurance he had on his life. State all that was said?

The defendant objects, as this man has no authority to state anything aside from this application. No evidence can be received aside from this application, and this man had no authority from the company to do more than receive the answers to these questions. Also, the contract provides that no statement or representations shall be introduced in evidence, except that in writing in the application when received at the home office in Connecticut.

Overruled; defendant excepts.

Q. I ask you particularly with reference to the question, "Have you any other insurance on your life?"

A. I asked him the question, if he had any other insurance as printed in the application (and as we ask every applicant), and he told me he had certain certificates of membership with certain co-operative societies, and he enumerated different ones, and said he did not know whether I would consider that insurance or not. I told him emphatically, that I didn't consider them insurance, and we had considerable conversation about it. He wanted to know my authority for saying I didn't consider them insurance. I gave him my authority—gave him my reasons, and he agreed with me, that these co-operative societies were in no sense insurance companies, and in that light I answered the question, "no."

Q. Did you tell him at that time, that the proper answer was "no," after he had stated the facts?

A. I did.

Defendant moves to strike out the answer for the objections formerly given.

Overruled; defendant excepts.

Q. Who wrote in the answers in there?

A. I did.

By instructions requested, numbers 1 and 2, (Pr. Rec., Page 32) the defendant (plaintiff in error), again brought to the attention of the court below, the contention in this case, and sought to have the jury instructed:

1. That if the application contained a stipulation that no statement or representation made or given to the person soliciting the insurance should be binding on the company, unless the statement or writing was in the application when received by the company at the home office in Hartford, and if it was further found that in the answer to the question as to whether or not Stevens had other insurance on his life, he answered "no other," then, that the jury should disregard any parol testimony tending to show any other statement was made, or any different state of facts to the agent soliciting the insurance.

2. That if the application, at the time it was received by the officers in Hartford, showed in answer to the question as to whether or not the applicant, Richard Stevens, had other insurance on his life, the answer was "none other," and if said Stevens had at that time other insurance existing on his life, which facts were not disclosed in the application, then the verdict should be for defendant.

These instructions, of which only the substance are given above, were each refused, and to such refusal the plaintiff in error excepted.

In the charge given to the jury, the court stated (Pr. Rec., Page 33) that the evidence showed that at the time the insurance was made on the life of Richard Stevens, by the plaintiff in error, he had other insurance on his life, and that insurance in co-operative or mutual benefit associations, was such insurance as Stevens was bound in good faith to disclose in answer to the question, and that the duty rested upon the applicant to state fully and fairly, all the

facts which existed in regard to any of the several matters that he was interrogated about.

On the defense plead by the defendant below, the court charged the jury as follows: (Pr. Rec., Page 34.)

Now then, the law of this question is, that if at that time, Stevens stated fairly and fully to Boak, the agent of the company, all the facts as they then existed in regard to and about this insurance in the co-operative companies, or if, in other words, Stevens fully informed Boak, the agent of the company, that he had these certificates of insurance in these co-operative companies, and then Boak wrote down the answer that he had no other insurance on the theory that they did not constitute insurance within the meaning and understanding of the questions as put in this application, then this mistake lies at the door of the insurance company, and not at the door of the assured. In other words, if Stevens fully stated the facts to the agent, Boak, and the agent came to the conclusion that certificates of this character in co-operative companies did not mean insurance within the view which the defendant company would take of insurance, and in that view wrote down this answer, that there was no other insurance, then it was the agent who made the mistake, and for that mistake the responsibility cannot be placed on the assured.

If, therefore, you find under the evidence that Stevens did state fully and fairly, the facts in regard to these different insurance, in co-operative companies to the agent, and the agent knowing all these facts, wrote the answer in the application as it is contained therein, the defendant is now estopped from making defense, by reason of the fact that Stevens did have insurance in these co-operative companies.

To these instructions the plaintiff in error excepted at the time they were given as follows: (Pr. Rec., Page 34.)

1. The defendant excepts to that portion of the charge of the court in which the jury was instructed, that if Stevens stated the facts fully and fairly to Boak, the company's agent, at the time of making the application, and Boak wrote down the answers, then the mistake or misrepresentation lay at the door of the company defendant, and not of Stevens.

2. And defendant further excepts to that part of the charge in which the jury were instructed, that if the agent, Boak, took

the view that the co-operative insurance then on the life of Stevens was no insurance, and so wrote the answer, the defendant is now estopped from claiming there was any falsity in the answers in the application.

The jury on the 18th day of June, 1886, brought in a verdict in favor of plaintiff and against plaintiff in error, in the sum of $5,556.66, upon which judgment was rendered in due form, after a motion for a new trial was overruled. Pr. Rec., Pages 13 and 14.)

It is to reverse this judgment, that the present writ of error is brought.

The points upon which we seek to reverse the judgment were raised in the court below in four different ways:

1. By demurrer to the replication. (Pr. Rec., Page 11.)

2. By objections to evidence. (Pr. Rec., Page 31.)

3. By instructions asked by plaintiff in error. (Pr. Rec., Page 32.)

4. By exceptions to the charge of the court. (Pr. Rec., Page 34.)

The motion for new trial, (Pr. Rec., Page 14) filed by plaintiff in error rehearsed the various rulings complained of, and was by the court overruled as before stated.

ASSIGNMENT OF ERRORS.

The court erred in overruling the appellant's demurrer to the appellee's reply, filed herein, for each of the reasons set out in said demurrer:

2. The court erred in overruling said demurrer for the reason that the contract between the applicant, Richard Stevens, and appellant, provided that no statements or representations made to the agent at the time of making the application for the insurance would have any force or effect whatever, unless in writing in the application itself when received by the officers of the appellant, and the reply, alleged statements and representations made at the time not contained in the application, to-wit:

(*a.*) That at the time said application was taken, the said Stevens informed the said Boak, of all the companies that he had certificates in, and the amount of each.

(*b.*) That the said agent of the defendant then wrote the answer to said question in said application, and informed the said Stevens that the company did not regard co-operative companies as insurance companies, and that question should be so answered.

3. The court erred in admitting the evidence of I. I. Boak as to the statements and representations made to and by the applicant, Richard Stevens, at the time his application was taken, for the reasons stated in the last assignment, and because incompetent and immaterial. The testimony is as follows:

(*a.*) He (Stevens), told me that he had certain certificates of membership with certain co-operative societies, and he enumerated different ones, and said he did not know whether I would consider them as insurance or not. I told him emphatically, that I didn't consider them as insurance.

(*b.*) He wanted to know my authority for saying I didn't consider them insurance; I gave him my authority—gave him my reasons and he agreed with me that these co-operative societies were in no sense insurance companies, and in that light, I answered the question, "no."

(*c.*) *Q.* Did you tell him the proper answer was "no," after he had stated the facts?

A. I did.

4. The court erred in admitting the testimony quoted in specifications (a), (b) and (c) in the last assignment, for that the power of the agent to bind the appellant was expressly limited in the application in evidence, and this limitation was within the knowledge of Richard Stevens, he having signed the application, and the said testimony having been objected to at the time, the objections overruled, and exceptions taken by the appellant.

5. The court erred in not striking out on motion of appellant, all the testimony of I. I. Boak, as shown in assignment, specifications (a,) (b) and (c,) and for the reasons stated in asssignments 2, 3 and 4.

6. The court erred in overruling the motion for a new trial, because the testimony of I. I. Boak, as set forth above, was improperly accepted and allowed to go to the jury over the objections of the appellant, and further, because the court erred in refusing the first and second instructions asked by appellant, as shown in assignments seven and eight, and also erred in instructing the jury, as shown in assignment nine, to which refusals and instructions given, the appellant excepted at the time and before the jury retired.

7. The court erred in refusing to give to the jury the following (first) instruction asked by the appellant, to-wit:

"You are instructed that if you find that the application in this case contained a stipulation that no statement or representation should be binding on the company unless the statements or representations were in writing in the application when received by the officers of the company at the home office in Hartford, and you further find that in answer to the question as to whether or not, Stevens had other insurance on his life at the time of making application to the defendant, he answered 'no other,' you are directed to disregard any parol testimony tending to show any other statement or any different state of facts to the agent soliciting the insurance, such statements or representations not being written in the application when received by the officers at the home office," because if the above facts were found, then Stevens had knowledge that the agent's power to bind the company extended no further than to write down the statements made to him and that true answers must be made thereto; also, because if the facts were found as stated in the instruction, then it was a complete defense to the plaintiff's action in law, and the jury should have been so instructed.

8. The court erred in refusing the following instructions (second) asked by appellant, to-wit:

"You are instructed that if at the time the application was received by the officers of the company at the home office in Hartford, the application showed

in answer to the question as to whether or not the applicant, Richard Stevens, had other insurance on his life, the answer was 'none other,' and in truth and fact, he had a large amount of insurance then existing upon his life, which facts were not disclosed in writing in the application, then the defendant is not liable in this action, and your verdict should be for the defendant," because the applicant, Stevens, was bound to make true answers to the questions asked him in the application, and if he answered untruly, there was no liability upon the policy, and also, because the power to bind the company by statements not in writing in the application was taken away from the agent, Boak, by the agreement of the parties, and his knowledge of such facts was not the knowledge of the appellant.

9. The court erred in giving to the jury the following portion of his charge, to-wit:

"Now then, the law of this question is, that if at the time Stevens stated fairly and fully to Boak, the agent of the company, all the facts as they then existed in regard to and about this insurance in the co-operative companies, or if, in other words, Stevens fully informed Boak, the agent of the company, that he had these certificates of insurance in these co-operative companies, and then Boak wrote down the answer that he had no other insurance, on the theory that they did not constitute insurance within the meaning and understanding of the questions as put in the application, then this mistake lies at the door of the insurance company, and not at the door of the assured."

(*a.*) Because the contract between Stevens and the appellant, was to the effect that no statement or representation not in writing in the application when received by the officers of the company at the home office should have any force or effect, and the above instruction disregarded this part of the contract; also:

(*b.*) Because the power of the agent, Boak, was limited to writing down the answers and statements given by Stevens, and he had no power to waive any portion of the requirements of the appellants in taking the application.

(*c.*) Because such limitation on Boak's power was brought to the knowledge of the applicant, a copy of the application being attached to the policy taken and delivered to Stevens.

10. The court erred in the following portion of the charge, to-wit:

"In other words, if Stevens fully stated the facts to the agent, Boak, and the agent came to the conclusion that certificates of this character in co-operative companies did not mean insurance within the view which the defendant company would take of insurance, and in that view wrote down this answer that there was no other insurance, then it was the agent who made the mistake, and for that mistake the responsibility cannot be placed upon the assured."

Because of the reasons (a), (b) and (c,) shown in the last assignments, because in view of the limitation of the power of the agent known to the applicant, his mistakes, if any he made in regard to the answers made by Stevens, were not chargeable to

the appellant but to Stevens, and Stevens was bound to know the contents of the application which he signed.

11. The court erred in rendering judgment upon the verdict of the jury, because of each of the errors herein specified, from one to ten, inclusive, together with the specifications under each.

ARGUMENT.

We contend in this case:

1. That Richard Stevens was bound to make truthful answers to each and every question propounded to him in the application.

2. That because of the false statement made in the application, that Richard Stevens had no other insurance upon his life, the policy issued was, and is absolutely void.

3. That no statement or explanation made by Stevens at the time of signing his application, and not incorporated therein, is admissible, because the parties agreed that such statements should be disregarded.

4. That the appellant is not estopped from insisting that the policy was void, for by express agreement the knowledge of the agent was not notice to the company, unless communicated in writing in the application.

5. The powers of the agent, Boak, were expressly limited in preparing the application to merely writing down the answer of the applicant to the questions propounded in the application.

I.

RICHARD STEVENS WAS BOUND TO MAKE TRUTHFUL ANSWERS TO EACH AND EVERY QUESTION PROPOUNDED TO HIM IN THE APPLICATION.

1. The court erred in refusing the second paragraph of instructions asked by appellant as shown by Assignment of Errors No. 8, (Pr. Rec., Page 38) as follows:

"You are instructed, that if at the time the application was received by the officers of the company at the home office in Hartford, the application showed that in answer to the question as to whether or not the applicant, Richard Stevens, had insurance on his life, the answer was 'none other,' and in truth and fact, he had a large amount of insurance then existing upon his life, which facts were not disclosed in writing in the application, then the defendant is not liable in this action, and your verdict should be for the defendant," because the applicant, Boak, was bound to make true answers to the questions asked him in the application, and also, because the agent had no power to bind the company by statements not in writing in the application, and his knowledge was not notice to the company.

The petition filed by the defendant in error upon which the cause was tried, set forth a copy of the policy as exhibit "A," together with a copy of the application and provisions and requirements referred to in the policy, (see Pr. Rec., Page 1 to 9.)

The law of this State provides, that a true copy of the application shall be attached to or endorsed upon

every policy of insurance (see McClain's Code, first volume, page 300,) viz:

SEC. 2. All insurance companies or associations shall upon the issue or renewal of any policy attach to such policy or endorse thereon a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy.

In pursuance of this provision, a copy of the application was in this case attached to the policy and in the form as set forth in the petition.

In that application of which the assured had a copy with his policy, appears a question (Pr. Rec., Page 5) as follows:

21. Is the said party or parties signing this application aware that any untrue or fraudulent answers to the questions in this application, or any suppression of facts in regard to the present or past state of health, habits of life, or condition of the person whose life is hereby proposed for insurance, will vitiate any policy which may be issued on this application and forfeit all payments which may be made hereon?

Ans. Yes.

By a stipulation following the above question and answer (Pr. Rec., Page 5), which has already been set forth at length, Stevens warranted his answers to be true. With the knowledge then, an untruthful answer would invalidate his policy (which knowledge he must at all times have had, having a copy of the application with the policy) and warranting such answers to be true, there was no room for equivocation.

The importance of absolute truthfulness under such circumstances is well set forth in May on Insurance, Page 180, second edition.

> The only question is, has the warranty been kept? There is no room for construction, no latitude, no equity. If the warranty be a statement of facts, it must be literally true; if a stipulation that a certain act shall or shall not be done, it must be literally performed.

The same text book also in connection with the above, states the law to be, that the materiality or immateriality of the statement, cuts no figure and makes no difference in the application of the principle. But this court has in the case of *Jeffries vs. Life Insurance Co.*, 22 Wall., page 48, stated that the rule fully as broadly, and adopted it in its full meaning.

The point arose upon the false statement, that the applicant was unmarried; also, that he had made no other application for insurance, when in fact he was already insured in a large amount.

The last point is substantially the same as in this case, and so it will be found that the plea in the case at bar, is substantially the same as in the last cited case.

It seems that counsel in that case, believing that the insurance company had been deceived to its advantage insisted on that view, but the court says:

> This is bad morality and bad law. No one may do evil that good may come. No man is justified in the utterance of a falsehood. It is an equal offence in morals whether committed for his own benefit or that of another.

After calling attention to the stipulations in the contract providing for truthful representations, substantially as in the case at bar, the opinion proceeds:

> This applies to all and to each one of such statements. In other words, if the statements are not true, it is agreed that no policy is made by the company and no policy is accepted by the insured.

The proposition at the foundation of this point is this, that the statements and declarations made in the policy shall be true. This stipulation is not expressed to be made as to important or material statements only, or to those supposed to be material, but as to all statements. The statements need not come up to the degree of warranties. They need not be representations, even if this term conveys an idea of an affirmation having any technical character; statements and declarations in the expression, what the applicant states and what the applicant declares. Nothing can be more simple. If he makes any statement in the declaration, it must be true; If he makes any declaration in the application, it must be true. A faithful performance of this agreement is made an express condition to the existence of a liability on the part of the company.

There is no place for the argument either, that the false statement was not material to the risk, or that it was a positive advantage to the company to be deceived by it. It is the distinct agreement that the company shall not be deceived to its injury or to its benefit. The right of an individual or a corporation to make an unwise bargain, is as complete as that to make a wise bargain. The right to make contracts carries with it the right to determine what is prudent and wise, what is unwise and imprudent, and upon that point the judgment of the individual, is subject to that of no other tribunal.

The case in hand affords a good illustration of this principle. The company deems it wise and prudent that the applicant should inform them truly whether he has made any other application to have his life insured. So material does it deem this information, that it stipulates that its liability shall depend upon the truth of the answer. The same is true of its inquiry, whether the party is married or single. The company fixes this estimate of its importance. The applicant agrees that it is thus important by accepting this test. It would be a violation of the legal rights of the company to take from it its acknowledged power, thus to make its opinion the standard of what is material, and to leave that point to the determination of a jury.

After referring to the cases of *Anderson vs. Fitzgerald*, 4 House of Lords cases, 483, and *Cazenove vs. British Equitable Assurance Co.*, 6 Common Bench, N. S. 437, Mr. Justice Hunt, says that many cases may be found which hold where false answers are made in answer to inquiries which do not relate to the risk, the policy is not necessarily avoided unless

the answer influenced the company, and it is a question for the jury; but that no respectable authority so holds, where it is expressly covenanted that the answers shall be true, and when that consideration forms the basis of the contract.

We further cite upon the point now being discussed, that is, that under the provisions of the application and contract, Stevens was bound to make truthful answers, and also, to the effect that whether the information sought to be obtained was material made no difference, the following cases:

Ætna Life Insurance Co., vs. France, 91 U. S. 511.

Price vs Insurance Co., 17 Minn., 514.

Day vs. Mutual Benefit Life Insurance Co., 29, Am. Repts., 565.

Kelsey vs. Insurance Co., 35 Conn., 225.

Miles vs. Insurance Co., 3 Grey, 580, 98 Mass., 381.

Miller vs. Life Insurance Co., 31 Iowa, page 232.

II.

BECAUSE OF THE FALSE STATEMENT MADE IN THE APPLICATION, THAT RICHARD STEVENS HAD NO OTHER INSURANCE ON HIS LIFE, THE POLICY ISSUED WAS, AND IS, ABSOLUTELY VOID.

The above proposition follows as a natural consequence if our first point is well taken.

It requires no argument or authorities to establish that if Stevens was bound to furnish truthful informa-

tion, and in answer to specific inquiries made, answered that he had no other insurasce, when he had in truth and fact a large amount at that time on his life, the life, the answer not only false but grossly ing.

The record fully and fairly shows the facts. The answer of plaintiff in error (Pr Rec., Page 10) has the following statements:

> That in the application for the policy and on the faith of which it was issued, in answer to the question therein asked him as to whether or not he had any other insurance on his life, he stated that he had no other, whereas in truth and fact, he had at that time a large amount of insurance upon his life, and was issued in a large amount, to-wit: In the sum of sixteen thousand five hundred dollars, in different insurance companies, and the answer was false and untrue.

The reply admits that at the time of making the application, Stevens held certificates in certain co-operative companies providing for assessment on the lives of members in case of death.

The statement of facts preceding this argument, has already set forth the amounts and dates of the policies of insurance on Richard Stevens' life. It will be noticed that all the insurance was taken at a comparatively recent date before the death of Richard Stevens.

While the agreement made by counsel on the trial (Pr. Rec., Page 30) shows that the insurance was held at the time of the death of Richard Stevens, it also shows the date of the policies.

The charge of the court (Pr. Rec., Page 33) finds as a fact, that at the time of the issuing of the insurance by the appellant, Richard Stevens did have other insurance on his life, and the court further

charged the jury that insurance in mutual benefit associations, was such insurance that Stevens in answer to the inquiry, was bound in good faith to make it known.

Good faith and fair dealing alike demand that when contracts are made depending on the truth being made known, and express inquiries are propounded for that purpose, the person whose duty it is to determine whether or not the contract shall be entered into, shall not be deceived by false answers. If they are so deceived, then the party contracting with them does so at his peril.

The application had incorporated within it (Pr. Rec., Page 5) the following stipulation:

> And it is hereby further covenanted and agreed, that the officers of the said company at the home office of the said company in Hartford, Connecticut, alone shall have authority to determine whether or not a policy of insurance shall be issued on this or any application, or whether or not any insurance shall take effect under this or any application.

With this knowledge that the officers of the company at Hartford were the persons to decide whether or not it was desirable for the company to make a contract with him, Richard Stevens deliberately signed his name to a false statement of fact, which the officers had made and thought of such importance as to ask him about. With ordinary understanding of the English language, he must have known that the policy thus issued upon this false basis was of no validity or force.

III.

NO STATEMENT OR EXPLANATION MADE BY STEVENS AT THE TIME OF SIGNING HIS APPLICATION AND NOT INCORPORATED THEREIN IS ADMISSIBLE, BECAUSE THE PARTIES AGREED THAT SUCH STATEMENTS SHOULD BE DISREGARDED.

1. We claim the court erred as shown by Assignment of Error No. 3 (Pr. Rec., Page 37) in admitting the evidence of Agent Boak, in substance as follows:

(*a.*) "He (Stevens) told me that he had certain certificates of membership with certain co-operative societies, and he enumerated different ones and said he did not know whether I would consider them as insurance or not. I told him emphatically that I didn't consider them as insurance."

(*b.*) "He wanted to know my authority for saying I didn't consider them insurance. I gave him my authority—gave him my reasons, and he agreed with me that these co-operative societies were in no sense insurance companies, and in that light I answered the question 'no.'"

(*c.*) *Question.* "Did you tell him that the proper answer was 'no,' after he had stated the facts?"

Answer. "I did."

This evidence was incompetent and immaterial, for the application provided that no statements or representations made or given to the person soliciting the insurance should be binding on the company unless in writing in the application when received by company.

2. Also the court erred in giving the following paragraph of the charge duly assigned as error, being No. 9 (Pr. Rec., Page 38:)

"Now then, the law of this question is, that if at the time Stevens stated fairly and fully to Boak, the agent of the company, all the facts as they then existed in regard to and about this insurance in the co-operative companies, or, if in other words, Stevens fully informed Boak the agent of the company, that he had these certificates of insurance in these co-operative companies, and then Boak wrote down the answer that he had no other insurance, on the theory that they didn't constitute insurance within the meaning of and understanding of the questions as put in the application, then this mistake lies at the door of the insurance company and not at the door of the assured."

The above paragraph was erroneous, because it, the application, provided that no statement or representation made to the person soliciting the insurance should be binding upon the company unless they appeared in writing in the application when received by the officers at the home office.

We now come to what we regard as the pivotal question in the case.

Under the stipulation in the application, in substance that the company should be bound by no statement or representation unless contained in the application when received by the the officers at Hartford, was it possible for Agent Boak to construe the language or interpret the information given by Stevens so as to mean exactly the opposite, to place

that answer in the application, and bind the company?

The sting of active, wilful deceit, is sought to be taken from Richard Stevens' conduct by giving it the less offensive appearance of a mistake made by Boak, and to these matters the agent himself testifies. (Pr. Rec., Page 31.)

But whether it was a mistake on the part of Boak, or active fraud on the part of Stevens, matters little. The damage and injury occurred. The company's officers were deceived in regard to a matter of which they had the right to know the truth.

All the time that Richard Stevens was carrying the policy before his death, he knew that the policies in the co-operative companies which he thought had enough insurance in them to accept and presumably pay for, had been represented by Boak to the company appellant, as "no insurance." Why should the agent have had any hesitation in stating the facts to the officers unless he knew that the amount of co-operative insurance held by Stevens would provoke inquiry and perhaps cause the rejection of the application, and consequently of his commission.

He (Boak) probably knew the estimation in which the officers of "old line" companies held those who invested largely in co-operative insurance. The remark of President Parsons, in his testimony (Pr. Rec., Page 30) bears on this point:

"The co-operative plan is regarded by the companies as insurance in passing upon applications, and the amount of insurance under such plan is regarded by us as a more significant factor in meas-

uring the moral hazard than the same amount of insurance under any other plan."

It is the "moral hazard," that is to be estimated in passing upon applications, as well as other considerations.

The defense made, is sought to be avoided on the ground in brief, that the knowledge of the agent, Boak, was notice to or knowledge by the insurance company. This is a familiar rule but not applicable to the facts of this case. That rule is well illustrated by the cases of

Insurance Company vs. Wilkinson, 13 Wall., 222.

Insurance Company vs. Mahone, 21 Wall., 152.

We admit its force and power in a proper case, such as either of the above. But in the case at bar, the applicant, as a preliminary undertaking, agreed that notice to, or the knowledge of Boak, should not be binding on the company unless written in the application. By his own voluntary act, the insured cut his representative or administrator off from relying on the position stated, and it would cause great injustice to hold and bind the company now by what they have expressly agreed should possess no power of that kind.

Doubtless the provision was placed in the contract with the express intention to prevent combinations between the agent and applicant, whereby important matters might be concealed from the officers. The interest of the agent where working on commission as Boak was in this case, (see his contract, Pr. Rec., Page 25) is unfortunately against his employer, and

in order to obtain a commission on an application, he is, unless honest, apt to perpetrate a fraud on the company by placing false answers in the application.

Whether done by the applicant alone or with the knowledge and connivance of the agent, the result is equally disastrous to the company.

The officers in that way form and enter into contracts without that knowledge of the facts which all intelligent men desire to have before they make any business engagements.

The very object and purpose of an application in writing to the company would thus be destroyed, and insurance companies might as well leave the whole matter of determining whether any insurance should be issued on any particular risk to its soliciting agents whose direct pecuniary interest in the matter would totally unfit them to thus take charge of one of the most important functions in a well regulated insurance company.

The clause in the application limiting the powers of the agent, is a most salutary and laudable one. It can work no injustice to the applicant, for, if he reads his application, he has full knowledge of it and he is presumed to have read the application, and is bound by its statements.

Insurance Company vs. Fletcher, 117 U. S. 531.

In support of the point as made, we cite

May on Insurance, page 124, second edition.

Of course if the insured stipulate in his application that the insurer shall not be bound by any act done or statement made to or by the agent not contained in the application, he cannot,

shelter himself under a plea of equitable estoppel by reason of the agent's fraud or negligence. The knowledge by the agent of a fact not stated in the application in that case becomes entirely immaterial, unless possibly, when the statement of the fact may have been fraudulently prevented by the agent.

The defendant in error in this case, to use the language of the above citation, is endeavoring to "shel-"ter himself under an equitable estoppel by reason "of the agent's fraud or negligence."

This we submit he cannot do. The case of

Chase vs. Insurance Company, 20 N. Y., 53, is applicable.

The application provided in substance that the company should not be bound by any act done or statement made to or by any agent or person which was not contained in the application.

The misrepresentation consisted in stating that the dwelling house insured, was of stone, when it had a wooden kitchen attached. It was contended on the part of the insured, that anything affecting the risk known to the agent of the company, need not be disclosed in the application.

The court declares that such a position could not be sustained on principle in the absence of authority. They say that insurance contracts are not to be made exceptions to the rule, and the plaintiff was bound by the statements made in the application whether he knew them or not, unless prevented by the fraud of the company from learning what they were. The case of *Jennings vs. Chenango Insurance Company*, 2 Denio, 75, is cited as supporting the decision when it is held that the falsity of a warranty entered into by the assured will not relieve the as-

sured from the consequences of the breach, and it is declared that such has been the law from the earliest times in England, New York and Massachusetts.

Brown vs. Insurance Company, 18 New York, 387, is also relied on as supporting the same doctrine.

See also,

Insurance Company vs. Stevens, 9 Allen, 332.

Bleakley vs. Insurance Company, 19 Gr. Chan. 198, 17 Miss., 247.

We now beg leave to refer the court to an authority which we can only regard as decisive:

New York Life Insurance Company vs. Fletcher, 117 U. S., 519.

This case, we may remark, was not brought to the attention of the court below, because so recently decided before the trial, and the publication had not reached counsel.

The facts were that certain statements and representations made by the assured were by him warranted to be true, and it was stipulated that they should be the basis of the contract between the assured and the company. It was also agreed that as the officers at the home office had the sole power to determine whether or not a policy should issue on any application, and as they acted only on the written statements and representations referred to, no statements or representations made, or information given to the persons soliciting or taking the application for the policy, should be binding on the company or in any manner affecting its rights, unless they were reduced to writing and presented at the home

office in the application. The provisions in these respects were substantially the same as the case at bar.

An "abstract" of the application in the Fletcher case was attached to the policy, while in the case at bar a full copy thereof was attached to the policy. (Pr. Rec., Page 29.)

In the case which we have cited, defense was made on the ground that the applicant had stated that he had never had any disease of the kidneys or any serious disease and had never been seriously ill, and had no regular medical attendant, whereas it was alleged that he had been sick with diabetes, and representations were false.

The plaintiff replied that the agents taking the application had full knowledge of the condition of the assured, and that the facts had been fully stated to them, but they had inserted false answers. That the assured had no reason to believe but that his answers were truthfully taken down, and signed the application without reading it, and without any knowledge but that the application contained the facts as stated to the agent, and plaintiff claimed the company was estopped from claiming the policy was void.

The company demurred to the reply, which demurrer was ovrruled.

The facts shown on the trial, established that the assured was afflicted with diabetes at the time of his application. That he informed the company's agent who told him just to give him the application and he would see if he could get it through.

The opinion of this court says: (Page 528.)

It is conceded that the statements and representations contained in the answers as written of the assured, to the questions propounded to him in his application respecting his past and present health, were material to the risk to be assured by the company, and that the insurance was made upon the faith of them, and upon his agreement accompanying them, that if they were false in any respect, the policy to be issued upon them should be void.

It is sought to meet and overcome the force of this conceded fact, by proof that he never made the statements and representations to which his name is signed, that he truthfully answered those questions; that false answers written by an agent of the company were inserted in place of those actually given, and were forwarded with the application to the home office, and it is contended that such proof being made, the plaintiff is not estopped from recovering.

But on the assumption that the fact as to the answers was as so stated, and that no further obligation rested upon the assured in connection with the policy, it is not easy to perceive how the company can be precluded from setting up their falsity or how any rights upon the policy ever accrued to him. It is, of course, not necessary to argue that the agent had no authority from the company to falsify the answers, or that the assured could acquire no right by virtue of his falsified answers. Both he and the company were deceived by the fraudulent conduct of the agent. The assured was placed in the position of making false representations in order to secure a valuable contract, which, upon a truthful reply of his condition, could not have been obtained. By them, the company was imposed upon and induced to enter in the contract. In such a case, assuming that both parties acted in good faith, justice would require that the contract be canceled and the premiums returned.

After referring to some other matters, the opinion proceeds:

But the case as presented by the record is by no means as favorable to him as we have assumed. It was his duty to read the application he signed. He knew that upon it the policy would be issued if issued at all. It would introduce great uncertainty in all business transactions if a party making written proposals for a contract with representations to induce its execution should be allowed to show, after it had been obtained, that he did not know the contents of his proposals and to enforce it, notwithstanding their falsity as to matters essential to its obligation and validity.

Contracts could not be made or business fairly conducted, if such a rule should prevail, and there is no reason why it should be applied merely to contracts of insurance. There is nothing in their nature which distinguishes them in this particular from others. But here the right is asserted to prove not only that the assured did not make the statements contained in his answers, but that he never read the application, and to recover upon a contract obtained by representations admitted to be false, just as though they were true. If he had read the printed lines of his application, he would have seen that it stipulated that the rights of the company could in no respect be affected by his verbal statements, or by those of his agents unless the same were reduced to writing and forwarded with the application to the home office. The company, like any other principal, could limit the authority of its agents and thus bind all parties dealing with them with knowledge of the limitation. It must be presumed that he read the application and was cognizant of the limitations therein expressed.

We respectfully submit that there is nothing in the case at bar, which will prevent the application of the wholesome doctrine here enunciated. It is not and cannot be the fact that insurance companies shall be debarred from those ordinary rights which obtain as to contracts between private individuals.

It is entirely proper and an ordinary safeguard, that an insurance company shall have all the representations, statements, etc., of the applicant, before its officers who are charged with the duty of making its contracts in writing when they enter upon the discharge of the important business of making a contract which shall last for a lifetime. When that requirement is placed before the applicant, it is beyond his power or the agent's power, and beyond the power of both combined to change it,

In this case the court, by instructions, sought to treat the answer of Stevens as one given by mistake, that is, while it is stated that co-operative insurance is such insurance as should have been reported, yet the agent's

knowing the facts and believing that it was not within the meaning of the question made his own understanding the test and answered "no." Now the charge says if the agent knew the facts and made such answers, it was a mistake which lay at the door of the insurance company and not of the assured. But the answer to this would be that the insurance company had as much right to protect itself against the results of a "mistake," as if the answer had been wilfully false. It may well be conceived that the provision that all statements should appear in writing in the application was inserted as much for the purpose of guarding against mistake as fraud. With it appearing there and the applicant consenting thereto, there was no chance for a mistake, had its direction been followed. The agent, giving him for the moment the benefit of the thought that he was actuated by proper motives in construing the answer of Stevens as he did, enlarged and magnified his office. He was for the purpose of preparing that paper only a clerk or amanuensis for the applicant, and the exact answer should have been written down. Was it then when he failed in performing that duty, a mistake which lay at the door of the insurance company?

If it was a mistake, then the minds of the contracting parties never met and there never was any contract.

In the Fletcher case the opinion further uses this language:

> The instructions given the jury in the case before us, is in effect that the assured was bound by his application if it was not avoided for fraud, and that it was so avoided by reason of the false statements contained in it, and that therefore the plaintiff as his representative could recover. But if the application was

avoided it would seem to be a necessary consequence that the policy itself was also avoided, and his right limited to recovering premiums paid. But such was not the conclusion of the court. It directed the jury if the application was avoided for fraud, he could recover. It does not seem to have occurred to the court that had the answers been truthfully reported, and the fact of the assured having had diabetes within a recent period been thus disclosed, the insurance would in all probability have been refused. If the policy can stand with the application avoided, it must stand upon parol statements not communicated to the company. This, of course, cannot be seriously maintained in the face of its notice that only statements in writing forwarded to its officers, would be considered. A curious result is the outcome of the instructions. If the agents committed no fraud, the plaintiff cannot recover, for the answers reported are not true; but if they did commit the imputed fraud, he may recover, although, upon the answers actually given, if truly reported, no policy would have issued. Such anomalous conclusions, cannot be maintained.

It is held in the foregoing case that the retention of the policy, with copy of application annexed, was an approval of the application and of its statements, and that the consequences of that approval cannot after the death of the assured be avoided.

American Insurance Company vs. Neiberger, 74 Mo., 167, and *Richardson vs. Insurance Company*, 46 Me., 394, are cited in the foregoing opinion as illustrating the doctrine of acceptance of policies with provisions left out, (and in other instances inserted) which was not contemplated, but which the assured was held to have ratified by retaining the policies. Also see

Moore vs. Insurance Company, 34 N. W. R., page 183.

Loehner vs. Home Insurance Company, 17 Mo., 247, is a very important case on the principal point involved here. Also, *Ryan vs. Insurance Company*,

41 Conn., 168. Both of these cases are cited and discussed in *Fletcher vs. Insurance Company, supra.*

We have given some space and time in this argument to the last mentioned case, for we are unable to find any difference in principle between that case and this.

The proof in this case shows that Boak had some conversation with Stevens while the application was being prepared, and of course before it was signed (Pr. Rec. page 31.) In that conversation Boak told Stevens that he did not consider co-operative insurance as insurance at all, and finally the two agreed that the co-operative societies were in no sense insurance companies, and the fate of such companies, organized on the plan of cheaper insurance, was thus informally determined. But these statements of the agent, made before the application was signed, had no force whatever.

Insurance Company vs. Moury, 96 U. S.,5 47.

This was a case where the policy had lapsed by reason of non-payment of premium. The plaintiff sought to overcome the defense by showing that the agent who induced him to apply for the policy represented, in answer to suggestions that he might not be informed when to pay the premiums, that the company would notify him in season to pay them, and that he need not give himself any uneasiness on that subject; that no such notification was given him before the maturity of the second premium, and for that reason he did not pay at the time required. It was contended that the representation constituted an estoppel upon the company against insisting upon the forfeiture of the policy.

The Supreme Court says:

"But to this position there is an obvious and complete answer. All previous verbal arrangements were merged in the written agreement. The understanding of the parties as to the amount of the insurance, the conditions upon which it should be payable, and the premium to be paid, was there expressed, for the very purpose of avoiding any controversy or question respecting them. The entire arrangement of the parties, with all the conditions upon which its fulfillment could be claimed, must be conclusively presumed to be there stated."

IV.

THE APPELLANT IS NOT ESTOPPED FROM INSISTING THAT THE POLICY WAS VOID, FOR BY THE EXPRESS AGREEMENT THE KNOWLEDGE OF THE AGENT WAS NOT NOTICE TO THE COMPANY UNLESS COMMUNICATED IN WRITING IN THE APPLICATION.

The reply of the defendant in error (Pr. Rec. 11) was substantially a plea in estoppel. The plaintiff in error demurred to that reply, setting forth the reasons, as hereinbefore stated, why it was no answer to the defense made of false answers or false representations.

The court erred, we submit, in overruling that demurrer, because the reply was based upon statements and representations not contained in the application. Assignment of error No. 2 (Pr. Rec. 37.)

It was entirely competent, we think, to raise the objection to the pleading in this manner, which was the course pursued in *New York Life Insurance Co. vs. Fletcher, supra.*

The agent, Boak, had no authority to waive any of the provisions or stipulations of the application or contract.

We desire to call the attention of the court specially to the following portion of the contract (Pr. Rec. page 23, No. 11): "The contract between the parties hereto is completely set forth in this policy and the application therefor, taken together, and none of its terms can be modified nor any forfeiture under it waived except by an agreement in writing, signed by the President or Secretary of the company, whose authority for this purpose will not be waived."

The facts of the case entitled *Mutual Fire Ins. Co. vs. Conover*, 98 Penn. St., 384, (also contained in 42 Am. Repts., page 618), were briefly as follows:

A fire insurance policy provided that no suit should be maintained on it unless commenced within six months after loss, and that no waiver of any condition should be effectual unless in writing and signed by the president and secretary. The suit was begun about two years after the loss occurred. The plaintiff admitted this was a good defense, but claimed that defendant was estopped from availing itself thereof because one who, as alleged, was general agent for the company, said that it was not necessary to sue at all, that the company was a little embarrassed, but would pay without suit. The company referred to a condition in the policy that no waiver of any of the terms, conditions, stipulations, etc., of the policy was effectual unless in writing under the signature of the president and secretary, and insisted that this was a good answer to the claimed estoppel. The name of the party who, it was claimed, acted as agent, was Reynolds. The Supreme Court, in the course of its opinion, says:

"The court below allowed a recovery upon the effect of the verbal declarations of Reynolds, operating by way of estoppel. But the contract of the parties expressly excluded Mr. Reynolds as a person who could make any binding declarations on the subject, whether verbal or written. Only the president and secretary combined could dispense with the necessity of bringing suit within six months, and that by an agreement or declaration in writing. To this the plaintiffs agreed in, and as a part of the very instrument upon which this suit is brought. In such circumstances the declarations or statements of Reynolds, waiving the performance of conditions, are absolutely nugatory. The parties have so agreed, and the courts have no right to alter the agreement of the parties in this respect or any other. Solemn contracts of parties, reduced to writing and duly executed, would have little value if their provisions could be arbitrarily set aside and disregarded by the tribunals."

See also,

Guernsey vs. American Ins. Co., 17 Minn., 104.
Catair vs. Ins. & Trust Co., 33 N. J., 487.

It was held in substance in the last case that when the policy contained an express limitation upon the power of the agent, he has no legal right to contract as agent of the company with the party to whom the policy has been issued so as to change its terms or to dispense with any part of the consideration, either by parol or in writing, and such party is estopped by accepting the policy from setting up powers in the agent at the time in opposition to limitations and conditions in the policy.

Also, see

Walsh vs. Ins. Co., 73 N. Y., 5.

Van Allen vs. Joint Stock Ins. Co., 64 N. Y., 469.

In the case at bar, if the provisions of the contract were to have any force, the talk and conversation had between Boak and Stevens was entirely immaterial. It could not change the existing condition nor place Stevens in any better position by reason thereof.

Nothing was kept back from Stevens. All the requirements of the company were submitted to him. Had he been deceived or misled in any manner, the result might have been different. It is not claimed that the agent attempted to deceive Stevens, but they talked the whole matter over, and together deliberately came to the conclusion that instead of laying the facts before the officers of appellant and permitting them to decide, that they, the agent and applicant, would decide themselves, and thereupon concluded that the policies Stevens had upon his life were not insurance. Undoubtedly the agent should have known better, but very likely he permitted his great desire to make the commissions on this application to lead him to unite with Stevens in an attempted deception, from which no other result could well come but long and expensive litigation.

V.

THE POWERS OF THE AGENT, BOAK, WERE EXPRESSLY LIMITED IN PREPARING THE APPLICATION TO MERELY WRITING DOWN THE ANSWERS OF THE APPLICANT TO THE QUESTIONS PROPOUNDED IN THE APPLICATION:

Under this the fifth point or division of the argument, we beg to call the attention of the court to Assignment of Error No. 7 (Pr. Rec. 38), which is an alleged error by reason of the refusal of court to give the jury the following instruction asked by appellant:

"You are instructed that if you find that the application in this case contained a stipulation that no statement or representation made or given to the person soliciting this application should be binding on the company unless the statements or representations were in writing in the application when received by the officers of the company at the home officers in Hartford, and you further find that in answer to the question as to whether or not Stevens had other insurance on his life at the time of making application to the defendant, he answered 'No other,' you are directed to disregard any parol testimony tending to show any other statement or any different state of facts to the agent soliciting the insurance, such statements or representations not being written in the application when received by the officers at the home office."

The refusal of the above instruction is claimed to be erroneous, because:

(*a.*) If the facts set forth in the instructions were found, then Stevens had knowledge that the agent's power to bind the company extended no further than to write down the statements made to him.

(*b.*) If the facts were found as stated in the said instruction, they were a complete defense to the action of the appellee, and the jury should have been so instructed.

The two facts upon which the instruction requested were based were undisputed, *i. e.*, that the application required the statements to be written therein, and that the answer to the question as to whether or not there was other insurance on Steven's life, was "No other."

The arguments made and authorities cited in support of the third division hereof, are to a large extent applicable here.

The powers of the agent, Boak, in preparing this preliminary statement or application were by the stipulation repeatedly referred to, expressly limited, so that he in fact had no discretion as to the matter to be written down. He was in good faith to the company for whom he was primarily acting and in good faith to the person whose application he was taking, bound to take down these answers with as much care as if he were a commissioner taking a deposition. Important property rights depended on his faithfulness. He had no latitude, no room for the exercise of judgment. The defendant in error to show the power of this agent, introduced in evidence, his contract with the insurance company. It is long and will be found in the Printed Record, beginning on page 24.

The powers which Mr. Boak had, are shown near top of page 25, which were to prosecute the business of soliciting and procuring applications for life insurance policies within and throughout his territory, and to deliver policies issued thereon and to receive and collect the first premiums therefor; also, to receive and collect the renewal premiums thereon;

only, however, as renewal receipts were furnished him signed by the secretary.

The powers which were denied Mr. Boak as such agent, are shown on page 28, being No. 13. He had no authority to make, alter or discharge any contract, or waive any condition or agreement in, or any forfeiture of any policy, or to receive any money for said company, except as stated above; and other reservations were made not necessary to state.

The defendant in error then, has by the introduction of this contract proven affirmatively that Boak had no power to do the very thing which, if the defendant in error is finally to succed, must be proven, *i. e.*, that notwithstanding the requirements of the application, that all statements and representations be reduced to writing, he could voluntarily waive that stipulation in such a manner as to estop the company from proving the truth. It seems that the appellee has laid an insurmountable barrier in the way of his recovery.

It is not necessary for us to prove the want of power, for it was done in opening the case by the plaintiff below.

In *Armstrong vs. State Ins. Co.*, 61 Iowa, 213, the agent was held strictly to the exercise of such powers only as had been conferred upon him by the company. It was held he had no power to make a contract of insurance.

In the case of *Critchett vs. Insurance Co.*, 53 Iowa, 404, the agent had the power to receive applications for insurance and collect and transmit premiums. It

was held he had no authority to extend the time for payment of premiums.

The Supreme Court of Iowa says, "But we are of the opinion that if Kennedy had expressly contracted that the company should carry the risk without payment after it had ceased by the terms of the policy, such contract would not have bound the company. There is no pretense that Kennedy had any express authority to bind the company by any contract whatever. He belonged to an extensive and well recognized class of insurance agents from whom the power to make contracts is withheld. If he had the power to contract in the name of the company to carry the risk without payment, after it had ceased by the terms of the policy, it is because the law would imply such power from the fact that he was authorized to collect and transmit premiums. But an agent employed to collect a claim does not thereby have authority to bind his principal even to grant an extension of time."

See also May on Insurance, page 156: "It behooves the applicant for life insurance, unless he has the most satisfactory evidence that the agent with whom he is negotiating has general and unrestricted powers, to examine carefully into the extent of his authority; for the law holds him bound to know, not only whether the agent is a general or special one, but if special what are the limitations of his authority."

Bacon on Benefit Societies and Life Insurance, in par. 153, declares the general rule to be that all limitations upon the agents' power which are brought to

the knowledge of the persons dealing with them must be respected.

Cleaver vs. Insurance Co., (Mich.) 32 N. W. R., 660, holds, that where the policy provides that if the insured shall procure any further insurance without consent of the defendant, that the policy should be void and where it further provided that the agent has no authority to modify any of its conditions or waive violations thereof, or revive it if rendered void by non-performance, and the insurer procures further insurance on a representation of the agent that it will be all right, and the property is destroyed by fire, the company is not estopped to deny its liability, since it may limit the powers of its agent in any legal way and make such limitation a part of its contract.

The conclusion of the learned court who tried this case below has, it appears to us, resulted in making a contract between the parties when none in fact ever existed. If the "mistake" of the agent is chargeable to the company, then they and all other corporations and persons acting by or through representatives are at the mercy of stupid and wilful agents, and no reservation of authority will serve to protect them.

In closing this argument, we remark again that it seems as if the case of the *New York Life Insurance Co. vs. Fletcher* was decisive of the point at issue here.

A reversal of the judgment below is respectfully requested.

J. L. CARNEY,
Attorney for Plaintiff in Error.

JAMES H. MCKENNEY
CLERK

In the Supreme Court of the United States,

OCTOBER TERM, A. D. 1889.

No. 374.

THE CONTINENTAL LIFE INSURANCE COMPANY, of Hartford, Conn.,
Plaintiff in Error.

vs.

W. J. CHAMBERLAIN, Administrator of the Estate of RICHARD STEVENS, (deceased)
Defendant in Error.

In error to the Circuit Court of the United States for the Northern District of Iowa.

Argument for Defendant in Error.

D. D. CHASE,

ATTORNEY FOR DEFENDANT IN ERROR.

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Defendant in Error.

In error to the Circuit Court of the United States for the Northern District of Iowa.

STATEMENT.

This action is brought on a policy of insurance by the administrator of Richard Stevens, deceased. Stevens was killed by a train of cars at Jewell Junction, Iowa. The company seeks to avoid the policy on the ground that one of the answers in the application was untrue. The proof showed that the application was taken by I. I. Boak, a special agent of the plaintiff in error, and in answer to a question in the application as to "what other insurance he had," Stevens informed Boak that he had a number of certificates in "co-operative" companies, and gave him full and detailed information in regard thereto; whereupon Boak informed Stevens that his company, the plaintiff in error, did not regard such certificates as insurance in any sense, and wrote the answer "no other" himself in the application, and informed Stevens that that was the proper answer.

There is no claim that Stevens did not act in entire good faith, nor that he did not fully and truthfully answer all questions in the application. There was a verdict and judgment for the administrator.

ARGUMENT.

In submitting the cause to the jury, Judge Shiras laid down the law of the case as follows:

Now, then, the law of this question is, that if at that time Stevens stated fairly and fully to Boak, the agent of the company, all the facts as they then existed in regard to and about this insurance in the co-operative companies, or if, in other words, Stevens fully informed Boak, the agent of the company, that he had these certificates of insurance in these co-operative companies, and then Boak wrote down the answer that he had no other insurance, on the theory that they did not constitute insurance within the meaning and understanding of the questions as put in this application, then this mistake lies at the door of the insurance company and not at the door of the assured. In other words, if Stevens fully stated the facts to the agent, Boak, and the agent came to the conclusion that certificates of this character in co-operative companies did not mean insurance within the view which the defendant company would take of insurance, and in that view wrote down this answer, that there was no other insurance, then it was the agent who made the mistake, and for that mistake the responsibility cannot be placed upon the assured. If, therefore, you find under the evidence that Stevens did state fully and fairly the facts in regard to these different insurances in co-operative companies to the agent, and the agent knowing all these facts wrote the answer in the application as it is contained therein, the defendant is now estopped from making defense by reason of the fact that Stevens did have insurance in the co-operative companies.—[*Transcript p. 33.*

The testimony of I. I. Boak who wrote the application was as follows:

I asked him (Stevens) the question if he had any other insurance, as printed in the application, and as we ask every applicant, and he told me he had certain certificates of membership with certain co-operative societies, and he enumerated different ones and said he did not know whether I would consider that insurance or not. I told him emphatically that I didn't consider them insurance, and we had considerable conversation about it. He wanted to know my authority for saying I didn't consider them insurance. I gave him my authority—gave him my reasons—and he agreed with me that these co-operative societies were in no sense insurance companies, and in that light *I* answered the question "no." Q.—Did you tell him at that time that the proper answer was "no" after he stated the facts? A.—I did. Q.—Who wrote the answer there? A.—I did. [*Transcript p. 31.*

It will be seen from this testimony:

1st. That Boak received full information, and determined the question as an insurance expert.

2nd. He answered the question himself instead of Stevens.

Did Judge Shiras state the law correctly? We think the instruction within the rule announced in *Insurance Co. vs. Wilkinson*, reported in 13 Wallace, 222. In that case, in answer to the question in the application as to mother's age at time of death, it was stated it was 40, and the cause of death was stated as being fever. These answers were not true. It appeared that the insured had stated in answer to these questions that "she did not know," and the agent had put down the answers on his own motion, and as the result of his own judgment. There was a verdict in the Circuit Court for the plaintiff, and the Insurance Co. appealed to the Supreme Court. The eminent judge who delivered the opinion of the Court, said:

"In the case before us a paper is offered in evidence against the plaintiff containing a representation concerning a material matter to the contract on which suit is brought, and it is not denied that he signed the instrument, and that the representation is untrue.

But the parol testimony makes it clear beyond question that this party did not intend to make the representation when he signed the paper, and did not know he was doing so, and in fact had refused to make such representation. If we suppose the party making the insurance to be an individual present when the application was signed, and soliciting the assured to make the contract of insurance, and that the insurer himself wrote out all these representations, and was told by the plaintiff that they knew nothing about this particular subject, and yet knowing all this wrote the representation to suit himself, it is clear that for the insurer to insist that the policy is void because it contains this statement would be an act of bad faith and of the gravest injustice and dishonesty. And the reason for this is that the representation was not the statement of the plaintiff, and the defendant knew it was not when it made the contract, and that it was made by the defendant who secured the plaintiff's signature thereto. * * * * * It is

well known, so well that no court would be justified in shutting its eyes to it, that insurance companies organized under the laws of one state, and having in that state their principal business office, send these agents all over the land with directions to procure applications for policies, furnishing them with printed arguments in favor of the value and necessity of life insurance, and of the special advantages of the corporation which the agent represents. They pay these agents large commissions, and policies are delivered at their hands to the assured. The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy rarely sees or knows anything about the company or its officers by whom it was issued, but looks to and relies upon the agent who has persuaded him to effect the insurance as the full and complete representative of the company in all that is said or done in making the contract. Has he not a right to so regard him? It is quite true that the reports of judicial decisions are filled with efforts of these companies by their counsel to establish the doctrine that they can do all this and yet limit their responsibility for the acts of these agents to the simple receipt of the premiums and delivery of the policy, the argument being that, as to all other acts of the agent, he is the agent of the assured.—This proposition is not without support in some of the earlier decisions on the subject. But to apply such a doctrine in full force to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading as it has done in numerous instances to the grossest frauds, of which the insurance companies receive the benefits, and the parties supposing themselves insured are the victims. The tendency of modern decisions in this country is steadily in the opposite direction."

The law in Iowa is that an agent with Boak's powers, in taking an application binds the company by the knowledge communicated to him when the application was made, and the company cannot restrict its liability.

Boetcher vs. Ins. Co., 47 Iowa 253.
Miller vs. Ins. Co., 31 Iowa 216.
Williams vs. Ins. Co., 50 Iowa 568.

In *Boetcher vs. Ins. Co., supra*, a stipulation was in the policy that the soliciting agent was the agent of assured. It was held that this did not alter the rule, and

was a fraud on the assured. See also *Rowley vs. Ins. Co.*, 37 N. Y. 550.

Boak's power did not cease after taking the application. He had power to receive renewal premiums. (*See Trans. p.* 24.)

It has even been held that such an agent may waive a forfeiture in the policy.

Walsh vs. the Aetna Life Ins. Co., 30 Iowa 133.

The rule is the same when the application limits the authority of the agents.

McArthur vs. Life Ass'n, 35 N. W. R. 430.

And where all the facts have been fully and correctly stated to the agent, and the latter makes out the application incorrectly, the liability of the insurance company is not affected, although the policy may contain a provision to the effect that the application, whether made by the agent or any other person, shall be deemed the act of the insured and not the insurer.

Kansel vs. Ins. Ass'n, 16 N. W. R. 430.

Nor is such liability affected by an agreement in the application that the statements therein are to be regarded as warranties.

Stone vs. Ins. Co., 28 N. W. R. 47.

In *Insurance Co. vs. Norton*, 96 U. S. 240, it was held that although a policy of insurance declares that agents have no power to waive a forfeiture, nevertheless parol evidence is admissible to prove such a waiver.

In the State of Iowa the statute provides that the company has no power to limit the authority of a person taking applications for such company so as to make him the agent of the assured. His fraud or mistake is the act of the company alone. (*Acts of 18th G. A., Chap.* 211, *Sec. 1.*)

The case so strongly relied upon by plaintiff in error, *Life Ins. Co. vs. Fletcher*, 117 U. S. 519, was decided under a different statute. Its points of distinction from the case at bar are:

First. The alleged false representation was on a matter alleged to have been the cause of the death.

Second. The case turned on the negligence of the assured in failing to read the application or policy.

Third. If the assured had read the application, the falsity of the representation would have been apparent to him.

In the case at bar the cause of death is admitted to be accidental. The alleged false statement had nothing to do with it. The assured did read the application, and in reading it could discover nothing which, in view of what had transpired, would justify him in believing the answer to be false.

It is not such a case as the Fletcher case, where, if applicant had carefully read the application, he would have instantly discovered that it was stated in the application that he had "no kidney disease," which was false, and different from the statement he had made.

Stevens could have made no similar discovery when he read the application. He had stated all the facts to Boak; the latter had, on his own responsibility as an insurance expert, determined the proper answer. He had undertaken to argue the matter, giving reasons, etc. Stevens, by reading the application, could have learned nothing he did not already know. The subject of insurance is complex—not easily understood except by experts. Boak assumed to know all about it. He stated what his company required. Of course Stevens believed him, trusted him, and relied on him. Moreover, Boak was evidently honest in his opinion. As the representative of an old line company, he was doubtless

accustomed to argue daily that these certificates were not "insurance," and he repeated this argument to Stevens, and voluntarily undertook to answer the question from his superior sources of knowledge as an insurance man. No case cited by plaintiff in error is parallel. In all those cases the answer was one within the knowledge of the applicant, and care in reading the application would have disclosed to him instantly the falsity of the statement. But Stevens might have read this application a hundred times and been none the wiser. There was no negligence on his part, nor any evasion or concealment. He did all that any one, under like circumstances, would have done or could be expected to do. It is not unreasonable that the public should act upon the supposition that an insurance company who sends out its soliciting agents around the country will select not only honest men, but those who are capable and who understand the business. It would be a singular rule of law which would make an innocent party answerable for the fraud or mistake of such agents acting within the scope of the business entrusted to them. No adjudged case can be found where the insured acts in entire good faith, and without negligence, in which it is held that the mistake of the company's agent, whether wilful or otherwise, avoids the contract of insurance. Such a rule would make the public the lawful prey of unscrupulous sharpers and insurance sharks. It is not too much to ask of those companies when they place thousands of miles between themselves and their customers, that these persons who act as their representatives, who constitute all of the company there is within sight or reach, shall not only be honest men, but know enough about the business so that the public are safe in dealing with them.

If an agent in any ordinary mercantile business

makes a mistake dealing with a customer, his principal is responsible for the consequences. In what does the selling of insurance policies differ from an ordinary commercial transaction. In this case it is evident that the mistake was the mistake of Boak. He and those who employed him were alone responsible for it.

He had read the printed arguments doubtless of this company proving that mutual co-operative societies were not insurance companies, and he supposed that the company would, in its own business, act consistently with these arguments. He construed these documents too literally. He read them *ipsissimis verbis*, instead of "between the lines." He made a mistake, but to visit its consequences upon the widow and children of Richard Stevens would be a novelty in the way of vicarious atonement.

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